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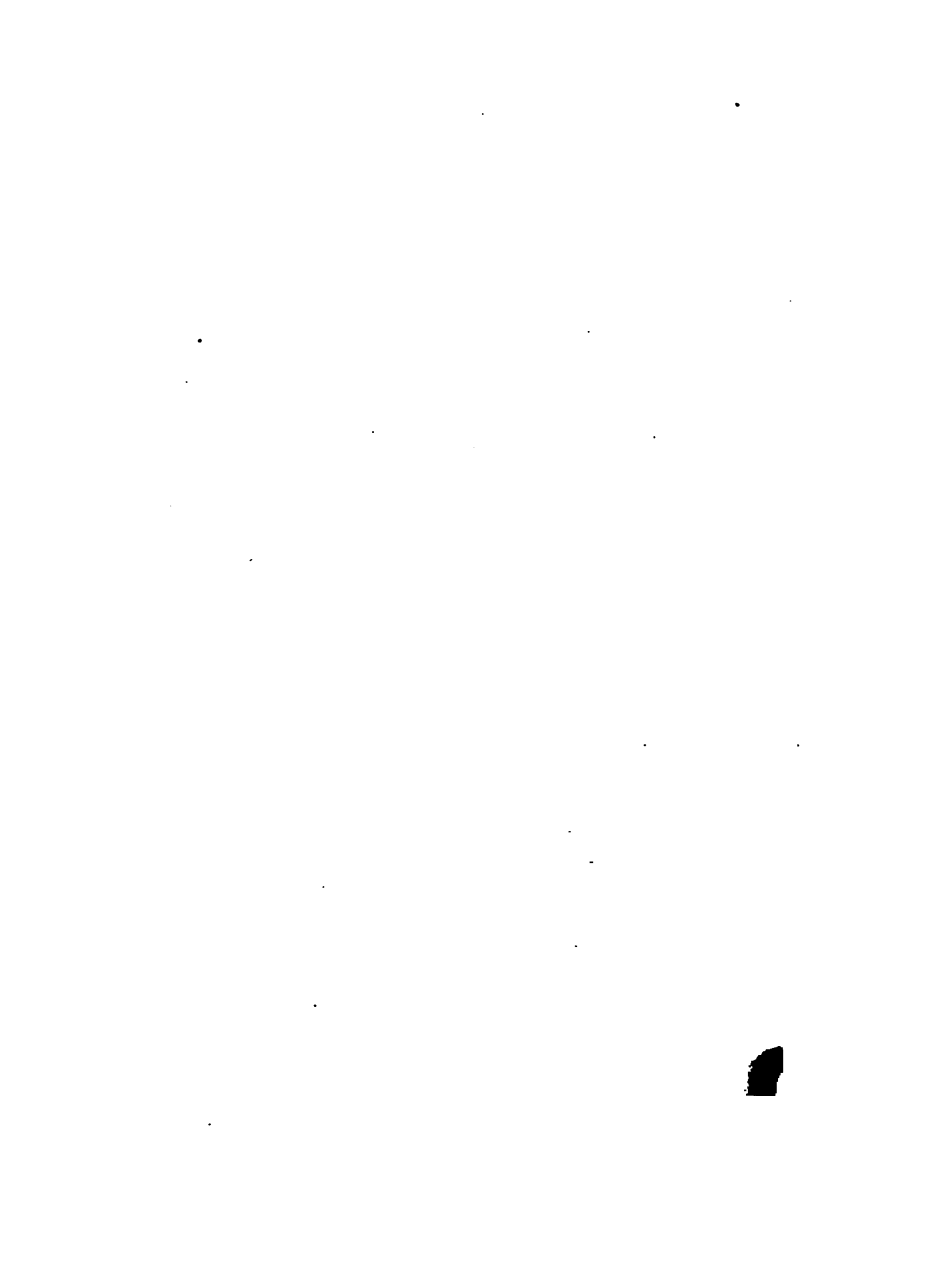
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A MANUAL  
OF  
PRACTICE AND PROCEDURE.



RELEASED BY THE  
LAW SOCIETY OF B. C. 1952

A MANUAL

OF THE

PRACTICE AND PROCEDURE

IN THE

SEVERAL COURTS HAVING CIVIL JURISDICTION

IN THE

PROVINCE OF QUEBEC.

CONTAINING

THE CODE OF CIVIL PROCEDURE OF LOWER CANADA  
WITH THE AMENDMENTS THERETO MADE SINCE ITS PROMULGATION  
THE AUTHORITIES AS REPORTED BY THE COMMISSIONERS  
AND REFERENCES TO SUBSEQUENT DECISIONS

ALSO

THE RULES OF PRACTICE OF THE SAID SEVERAL COURTS  
AND TABLES OF THE TARIFFS OF FEES, ETC.  
PAYABLE ON ALL PROCEEDINGS  
WITH VARIOUS OTHER USEFUL MATTER  
AND A GENERAL INDEX

BY

IVAN WOTHERSPOON, ESQ.,  
*Advocate, M.A., LL. B.*

REVISED EDITION.

MONTREAL

DAWSON BROTHERS

1880

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*[Handwritten signature]*



Entered according to Act of Parliament of Canada in the year 1880,  
by DAWSON BROTHERS, in the Office of the  
Minister of Agriculture.

**TO**

**MY CO-LABORERS IN AN ARDUOUS**  
**PROFESSION**

**THIS LITTLE MANUAL IS DEDICATED.**

**IN THE HOPE THAT IT MAY PROVE**

**A READY AND FAITHFUL ASSISTANT IN**  
**THEIR PRACTICE.**





## P R E F A C E.

---

DURING the nine years which have elapsed since the first edition of this work was published, a great many amendments have been made to the Code of Procedure, but numerous as they are, they have been made separately, and upon no very settled principle. And although the first edition has been for some time out of print, this edition has been delayed in consequence of my having been aware that a strong feeling existed among many of the leading members of the Bar, especially at Montreal, that more radical changes should be made. At different times meetings have been held, and reports made, embodying the views of different members of the Bar, and it was thought that the Legislature would adopt many of these. This feeling, however, seems to have reached its height about three years ago, when a Committee was appointed by the Bar of Montreal to draw up a suggestion of amendments. This they did, and the result of their labors was embodied in a report of which the following were the leading suggestions :—

### COURT OF QUEEN'S BENCH.

#### *Crown Side.*

The Crown side of the Court of Queen's Bench in Montreal to have six terms instead of two.

The Quarter Sessions to be merged in the Queen's Bench, as in the rural districts, discretionary power to be given to the Judge in any rural district (the appeal from which is to Montreal) to send prisoners for trial to Montreal as at a Central Criminal Court, if it appears to him that no interest is affected, either where there is a great length of time between commitment and the criminal term of the district, or where there are so few cases as to make it unadvisable to summon the jurors for such district. In such case the judge to have power to order the taxation for prisoners' witnesses under certain restrictions, to avoid abuse.

The terms of the Crown side in Montreal to commence on a certain day, in months as much as possible alternate, leaving out the months of July and August, the latter half of December and the first half of January.

### *Appeal Side.*

The terms of this Court should be abolished, and the judges should have the power to fix days for hearing cases by rule of practice or order; the sittings to be, as far as practicable, constant at Quebec and Montreal, during eight months of the year, leaving out July, August, September and January. The details of arrangements to be left to the judges. A sixth judge to be added to the number of the judges of the court of Queen's Bench, the quorum to be as at present, four. The Court never to sit more than five judges.

### SUPERIOR COURT.

The present system as to hearing, and merits and hearing, to be continued as at present. In the hearing and merits division two judges to sit for hearing and merits as a rule. Cases to be inscribed on one roll and to be distributed between the judges. If necessary and possible, three judges to sit.

Courts of Practice and Insolvency to sit every alternate day. The Court of Insolvency to be held by the same judge during a year, saving vacation.

The judges of the Superior Court residing in the city of Montreal, not to hold any courts in any other district, nor any Circuit Court. A circuit judge to be appointed, who shall sit in the city of Montreal, with jurisdiction over the district of Montreal, as at present. In case of his illness or absence, such circuit judge to have power to name his deputy, who shall be a barrister of at least ten years' standing, the compensation of such barrister, to be the same as that of the circuit judge, and to be paid by the Local Government.

The Court of Review to be abolished, save for election cases, as now provided by law. Motions for new trial, etc., in jury cases, now made before the Court of Review, to be made before the judge sitting in the practice court.

The writs in the Superior Court and Circuit Court to be the English and Upper Canadian form, the party to appear within ten days of service in Superior Court and five days in the Circuit Court, and an extra day for every additional fifty miles over one hundred. Condensed statement of cause of action to be endorsed on writ, or set forth in declaration or bill of particulars annexed.

If in the opinion of the judge, on return of the writ, further

particulars or special declaration are necessary, they may be ordered on application.

Short forms of declarations and pleas to be used. Defendant pleads: "*Défense en fait.*" "Payment before institution of action:" "Compensation by account hereunto annexed," and the like sufficient. No conclusions required either in declarations or pleas, unless ordered by the judge.

"Plaintiff replies generally," sufficient for general replication.

Articulations and answers to articulations to be abolished.

Inscriptions any time after issue joined.

*Commissions Rogatoires* to issue to commissioners to take evidence in foreign parts, without interrogatories or cross interrogatories, to be applied for within four days of joinder of issue. Commission to contain summary statement of facts to be enquired into and may be directed to one commissioner. Counsel can be employed to marshal the evidence, and examine and cross-examine the witnesses on such commission.

Juries in all cases to give a general verdict, save when the judge at trial requires them to answer questions propounded by him. The suggestion of facts to be abolished.

By consent of parties, jury trial may be obtained in any case, and the number of jurymen may be reduced to an uneven number, not less than five, verdict to be rendered by four out of five, five out of seven, seven out of nine, and nine out of eleven. In all cases in the Superior and Circuit Courts the parties can be examined as witnesses on their own behalf.

## APPEALS.

In all matters, appeal from final judgment to be by inscription for hearing before the Court of Queen's Bench, such inscription to be made and filed in the prothonotary's office of the court appealed from, within eight days from the rendering of such judgment, the record to be sent up to the court of Appeals within eight days of inscription.

Judgment to be executory, unless bond for debt, interest and costs be given within fifteen days. If no bond be given, deposit of one hundred dollars for costs to be made within said delay of fifteen days, or the judgment to be executory.

Prothonotary to be entitled to \$7.50 for making up record and transmitting, and \$3 on bond, said sums to be deposited with inscription.

Party appealing to appear within three days of return of record, and to pay \$10 for appearance.

Respondent to appear within the same delay, and to pay the same fee.

Reasons of appeal, and answers to reasons, abolished in all cases.

Printed factums to be filed within fifteen days of return of record in summary matters, in thirty days in other matters, with power to the judges in term or vacation to extend the time on good cause shown.

Judgment of non-pros to be obtained in event of default of appellant, either in return of record or non-filing of factum. Application to be made, after notice, to judge in chambers, with power to him to adjudicate on costs. On default of respondent appellant to proceed *ex parte*.

Where appeals from interlocutory judgments are permitted, application may be made to a judge of the Queen's Bench in chambers, on notice to opposite party, which judge shall have all the powers to decide thereon now vested in the court.

At the meeting of the bar of Montreal to which this report was made, it was upon motion adopted.

It was then moved by Joseph Doutre, Esq., Q. C., seconded by Alexander Cross, Esq., Q. C.,—"That the Legislature of Quebec be requested to amend section 9 of the 78th chapter of the Consolidated Statutes so as to provide that all the Judges shall reside at Quebec and Montreal, in the following proportion, ten (10) at Quebec and sixteen (16) at Montreal; and whenever it shall be necessary for the Judge of the Superior Court to go to another District to fulfil duties, the Chief Justice of the Superior Court will indicate one of the said Judges to perform said duties; that the office of District Magistrate should be abolished, and District Judges appointed, said District Judges in penal matters to be the same as District Magistrates, and in civil matters hold the circuit court with appeals to be granted in all cases where the amount involved is over one hundred dollars."

No further action was taken at this meeting.

Subsequently a new committee was appointed to confer with the Government at Quebec, with the view of obtaining the passage of an act embodying a number of these changes. A bill was prepared and submitted to the legislature, but met with so much opposition from the members from the rural districts that it was withdrawn. Commissioners were afterwards named by the Government to consolidate the amendments to the Code and make suggestions. The labors of these gentlemen, however, never seem to have been laid before the House, and no action of an important nature has since been taken.

Since the report made by the committee to the Bar at Montreal, (which has been given above,) several of the changes suggested have been adopted, but among the more important ones which still require legislation to give them vitality are those which provide for shorter forms of pleading, and the reform of the Court of Appeals, so as to enable it to sit more frequently, and thus clear off the arrears which have accumulated, and keep pace with the new business coming before it. And it is to be hoped that steps will be taken to this end as soon as possible.

I, at first, intended to embody in this edition comments upon the text of the Code, and the reported cases bearing upon questions of practice which have been decided, but finally came to the conclusion that in doing so I would take from the book its character of a "Handy Manual," and make it a library work. To have issued it in that form, and made it satisfactory to the Bar and myself, would have involved my devoting to it more time and attention than I have had at my disposal, and at the same time have left the want of a manual unsatisfied.

The text of the Code has been altered in conformity with the amendments up to last session, and in the preliminary matter will be found the statutes since passed, bearing upon the subject. I have also placed among this introductory matter the logical and lucid remarks of Chief Justice Sewell on pleading, pronounced in the case of *Forbes vs. Atkinson*, as originally published in Stuart's reports, pages 107 to 116. Notwithstanding the changes that have since taken place, these remarks preserve, almost intact, their original force; and till our system is radically changed they should be borne in mind by every practitioner.

I would be unjust if I closed these remarks without testifying to the valuable aid I have received in compiling this edition from Messrs. Armine D. Nicolls and Wm. L. Ross, Advocates, and upon whom in fact, a very large part of the labor has devolved.

I. W.

MONTREAL, 1880.



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A SHORT DISSERTATION.  
ON  
LAW PLEADING IN LOWER CANADA.  
BY  
THE LATE CHIEF JUSTICE SEWELL.\*

LOGICAL, DISTINCT and CONSISTENT PLEADING is essential to the right administration of justice, and to facilitate the attainment of this important object the several forms of pleadings, contained in the appendix to the rules and orders, have been prescribed. The principle, upon which these forms are founded, should be thoroughly understood, and I shall avail myself of the opportunity now offered, to explain them generally.

Every contested suit at law consists of the *demande* on one side, and the *défense* upon the other. *Vide* the words "*Intendits*" et "*Articulation des faits*" in the *Repertoire*. The term *demande* implies the representation, and the claim of redress, which the plaintiff, in any instance or suit at law, makes against the defendant, for or by reason of the *facts* which constitute his cause of action; and a *demande* is therefore said to be "the exercise of a right of action." † The term *défense*, on the other hand, implies all that the defendant offers, by way of opposition or resistance, against the plaintiff's *demande*. ‡ The matters which constitute the *demande* and the *défense*, in any case, are respectively set forth in the pleadings of the parties, which vary according to the grounds upon which they are made, and the objects they are designed to attain.

Pleading, therefore, is the statement of the facts which constitute the plaintiff's cause of action, or the defendant's ground of defence, exhibited in writing in technical form. It is the mode of alleging that, which is afterwards to become in evidence the support of the party by whom it is alleged, || or, a simple *negatur* of that which is alleged by an adversary; the former

\* This essay is taken from Stuart's L. C. Reports, p. 107.

† 7, Pigeau. 33.

‡ 1. Pothier 4to.—Code Civile, 5. tit., art. 1st. and 5th.

|| 3. T. Rep. 159.—Doug. 278,

being an affirmative, the latter a negative pleading.\* An affirmative pleading consists of two parts, the *libel* and the *conclusion*. In the *libel*,—or *narration* as it is sometimes called,—the facts which constitute the grounds of the pleading that is to say, the premises, from which the conclusions in law are to follow, are alleged and set forth distinctly as to time, place, person and circumstance; † without comment or argument of any kind. ‡ And to the *libel*, which should contain all that is necessary to justify the conclusion and no more, is added the prayer of the pleader, in apt words, for that specific remedy or relief, to which by law, the facts which he has libelled entitle him, and this is the conclusion. || A negative pleading, in like manner, consists of two parts; of a direct denegation of that to which it answers, and of the conclusion, which asks that relief or remedy to which the pleader will be by law entitled, if that which he denies, be not verified.

In the law of England it is a general rule in pleading, “That a mere prayer for judgment without pointing out the appropriate remedy, is sufficient, and that the facts been shown, the court *ex officio*, is bound to pronounce the proper judgment,” § But the reverse of this rule is the principle of the law of Canada. With us the conclusions are held to be essential to the proceedings, ¶ and must contain, à peine de nullité, all that the judgment of the court must comprehend. \*\* For although the conclusions may by the court be allowed or rejected *in toto*, or modified and allowed in part, and rejected in part, †† still what is omitted in the conclusions cannot be supplied by the court, not even if it appears in substance in the body, or *libel* of the pleading. ‡‡

The *declaration* is the first pleading in every case. It sets forth the facts which constitute the plaintiff's *demande*, and is always an affirmative pleading. *Pleas* are the pleadings, which set forth the *défense* of the defendant, and these are sometimes negative, and sometimes affirmative. A negative plea denies the matters which constitute the grounds or *fonds* of the plain-

\* Heineccius in Pandectas, part 2, s. 32.—Brown's Civil Law, vol. i., p. 35.

† 1 Pigeau, 296, 270.—1 Gauret, 4.—Code Civile, tit. 2, art. 1, and tit. 20, art. 1.

‡ 7th Pothier, 4to., 55, art. 4, c. 3.—Code Civile, tit. 20, art. 1.

|| Repertoire, *verbo*, Conclure, 8vo., vol. xiv., p. 77.

§ 4th East. 502, 509; 5th, *Id.* 270, 271.—1st Chitty, 243, 445.

¶ 14 Vol. Repertoire, 8vo., p. 77. *verbo* Conclure.

\*\* 14th Vol. Repertoire, 8vo. p. 78.—Code Civile, tit. 2, art. 1.

†† 14 Vol. Repertoire, p. 78 and 17.—Vol. p. 479, *verbo* Demande.—L. C. Denizart, *verbo*, Conclusions, vol. p. 83, no. 2.

‡‡ 14 Vol. Repertoire, 8vo., pp. 76, 78.—1 Pigeau, 399, 400.

tiff's *demande*, and does no more; but an affirmative plea alleges some new matter, which being proved, is of itself sufficient to authorize a judgment for the defendant, notwithstanding the matters which constitute the ground or *fonds* of the plaintiff's *demande*; and for the purpose of this distinction, the word *défense* is used in a second and limited sense; a negative plea being called a "*défense au fonds*," because it impeaches or denies the grounds or *fonds* of the plaintiff's *demande* set forth in his declaration, in opposition to an affirmative plea which is called an *exception* (from the Latin *excipere* to exclude), because it does not impeach or deny the ground or *fonds* of the plaintiff's *demande*, set forth in his declaration, but alleges, and relies entirely upon one or more new matters as cause why the plaintiff's suit should be delayed or dismissed,\* and hence the maxim *reus excipiendo fit actor*.†

The remaining pleadings known in the law of Canada, are *answers* and *replications*, the pleading which is put in by a plaintiff, in answer to an affirmative plea filed by a defendant, being an *answer*; and the pleading which is put in by a plaintiff in reply to a negative plea, or by a defendant in reply to a plaintiff's answer to an affirmative plea, being a *replication*.‡ Thus much being generally premised with respect to the pleadings which occur in the course of ordinary suits, the nature of each may now be more particularly considered.

The *declaration* is a specification of the matters that constitute the plaintiff's cause of action, an accurate and logical statement of his complaint or charge against the defendant; and of the remedy in law for which he demands judgment. In this pleading the plaintiff is required, *à peine de nullité*, to narrate and libel distinctly, as to time, place, person, and circumstance, the several facts upon which he prosecutes, and which he intends to prove in evidence; || all of which he therefore offers "to verify, prove and maintain when and as the court shall direct"; averring the whole "to be well-founded in fact and in law"; and praying, by his conclusion, that the

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\* Heineccius *Elementa Jur. Civ.* p. 395, tit 13, art. 1277.—Heineccius in *Pandectas*, part ii., s 42.—7 Pothier, 4to. 14.—Dela Jannès, vol. ii., p. 406, tit. 29, art. 629.—L. C. Denizart, vol. viii., p. 166, *verbo*, *Exceptions*, sec. 1, no. 1.—1 Pigeau, 150.—Jousse, *Idée de la Justice Civile*. tit. 3, part ii, sec. 1, art. 5, page 63.—Erskine's *Institutes*, p. 663.

† *Repert. 8vo.*, vol. iv., p. 363.—Jousse *Idée de la Justice Civile*, p. 63.

‡ *Prov. Ord.* 25 Geo. III., c. 2, s. 13.

|| *Code Civile*, tit. 11, art. 1.—I Gauret, 4.—*Repertoire*, 2 vol. 8vo. p. 4, *verbo* adjournment



court, under the authority of its jurisdiction, will "compel the defendant to appear," and "to answer unto him, the plaintiff, of (i.e., concerning) the *demande* contained in his declaration," and will award to him the appropriate remedy in law, which he specifically sets forth and alleges to be the legal result of the premises.\* By the king's writ or process *ad respondendum*, the defendant is summoned to appear and to answer to the *demande* of the plaintiff contained in his "declaration"; † and if he appears (to prevent a judgment against him by proceedings *ex parte*), he must answer, or show "that by law he is not bound to answer."

This constitutes the first great division in pleas; for, as it would be contrary to law to compel a defendant to answer to a *demande*, who is not bound by law to do so, and consequently what no court lawfully can do; "whether he be or be not bound to answer," must necessarily be a *preliminary inquiry* in all cases in which the defendant contends, "that he is not bound to answer." For which reasons, if he does contend "that he is not by law bound to answer," he is required to file, in *limine litis*, his plea or pleas to this effect, *without answering the demande*; and hence such pleas are sometimes called "*preliminary pleas*." ‡ But as the principal allegation of every such plea is, "that in this cause, the court of our lord the king now here, by law cannot proceed," || they are more technically distinguished from pleas which answer the *demande* (and are thence called "*pleas to the action*") by the title of "*fins de non procéder*." § A preliminary plea, or "*fin de non procéder*," from its nature, cannot, in any case, be a negative plea. A negative plea necessarily takes issue upon the facts stated in the declaration, and the defendant, by such a plea, instead of showing "that he is not by law bound to answer," would, in fact, answer the *demande*. As the defendant must therefore plead affirmatively, the matter on which he relies for the support of his averment ("that he is not by law bound to answer"), all *fins de non procéder* are *exceptions*. For the same reason (that is, because they cannot answer the *demande*), *fins de non procéder* cannot put in issue the right of action, as it respects either of the parties, or the subject of the suit; they have, in truth, relation to the court only, and are founded upon

\* Rules and orders, p. 233.

† *Ib.* p. 191.

‡ Rules and orders, sec. 7, art. 7, p. 68.

|| *Ib.* pp. 234 and 235.

§ L. C. Denizart, vol. ii., p. 638, *verbo*, *Fin de non procéder*, s. 1.—Serpillon. p. 54, note 2.—Jousse Cod. Civ., vol. i., p. 182.—Repertoire, vol. xxv., 8vo., p. 62.

the principle of some defect of authority in the court to compel an answer; \* the matter, which they allege, tending upon this ground solely, "to defeat the present proceeding," without inquiry whether the plaintiff hath or hath not a right of action; † and therefore, *fins de non procéder* do not pray, "that the action may be dismissed"; but, "that the writ and process *ad respondendum*, and the declaration, and each of them, be declared null and of no effect whatever," or, "that all proceedings be stayed until, &c.," according to the legal import and effect of the matter pleaded. ‡

*Fins de non procéder* are divided into three classes, and have reference—To the jurisdiction of the court; to the form of the proceedings; or to some exemption from the common obligation to answer, to which the defendant is entitled.

The defendant therefore may show, that he is not by law bound to answer to the *demande* of the plaintiff in his declaration contained, by pleading.

1. That by reason of some matter, which he (the defendant) alleges and sets forth, "The court by law cannot proceed in the cause nor compel him to answer in any manner unto the *demande*, nor in any way take cognizance of the action of the plaintiff, if any he hath, &c." || *for want of jurisdiction*; and this is the *exception declinatoire*. §

2. That by reason of some *imperfection, defect, or want of form* in the proceeding, i.e., apparent upon the face of the proceedings (7 Pothier, 15), as in the writ or declaration, which he specifically sets forth, and of some law, rule or order which he also sets forth, "the court cannot proceed in the cause, nor compel him to answer, in any manner, unto the *demande*," because the proceedings are null; and this is the *exception à la forme*. ¶

3. That by reason of some matter which he alleges and sets out, "the court cannot, at this time, proceed in the cause, nor compel him to answer, in any manner, unto the *demande*," because the matter so pleaded is such as entitles the defendant,

\* Serpillon, p. 54, note 2.

† *Ib* p. 54, note 2.

‡ Rules and orders, p. 236. 1 Pig. 162.

|| Rules and orders, p. 234.

§ L. C. Denizart, vol. viii., p. 638. *verbo*, *Fins de non procéder*, sec. 2.—7 Pothier, 17.—Jousse, C. C., vol. i., p. 182.—Repertoire, *verbo*, *Fin.*, vol. xxv., 8vo., p. 62.—Serpillon, p. 54, note 2.

¶ Rules and orders, p. 236.—Jousse, C. C., vol. i., p. 182.—L. C. Denizart, *verbo*, *Fins de non procéder*, sec. 2, vol. viii., p. 638.—Repertoire, *verbo*, *Fin.* vol. xxv., 8vo., p. 62.—7 Pot. 15.

at this time by law, to an exemption from the common obligation to answer; and this is the *exception dilatoire*. \*

When *fin de non procéder* are allowed, the *instance* or suit is either suspended until the court has authority to proceed, and to compel an answer, or the writ and process *ad respondendum* and the declaration are declared to be null and of no effect; the defendant in the latter case being discharged or dismissed out of court, and the plaintiff obliged to sue out a new process *ad respondendum*; but when they are overruled as frivolous, the defendant, within the time limited by the practice of the court, is bound "to answer to the plaintiff of the *demande* contained in his declaration," by a *plea to the action*, of which we will now enquire. †

As that is the preliminary plea, or *fin de non procéder*, which questions the authority of the court to compel an answer, and *does not* put in issue the right of action, as it respects either of the parties to the suit, or the subject matter of the suit; so *e converso*, a plea to the action is that which *does* put in issue the right of action, as it respects the parties or the subject-matter of the suit, and *does not* question the authority of the court in any manner.

The right of action is put in issue by a negative plea, denying the case stated in the declaration, in point of fact, or in point of law; and all such pleas are "*défenses au fonds*"; for, as they contest the very ground or *fonds* of the plaintiff's *demande*, by denying the truth of the facts set forth in his declaration, or the validity of the law which he avers to be the result of the facts set forth, they are distinguished from other pleas and from the aggregate of pleas (which is implied by the word *défense* in its general acceptation) by the particular descriptive title of "*défenses au fonds*." ‡ The right of action is also put in issue by any affirmative plea, which sets forth and pleads any matter relating either to the parties or to the subject of the suit, which of itself is sufficient in law to authorise a judgment for the defendant, notwithstanding the facts set forth in the declaration of the plaintiff; and all such pleas, for the reasons before given, are *exceptions*; § but as exceptions of this kind have a *tendency in law* to bar the plaintiff's action for ever, or to abate it, until the disability, or other effect of the matter pleaded, shall have been removed, they are distinguished

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\* L. C. Denizart, vol. viii., p. 638. *verbo*, Fins de non procéder, ss. 1 and 2,—Repertoire, *verbo*, Fin. vol. xxv., 8vo., p. 62, 7 Pothier, 16.

† Rules and orders, sec. 7, arts. 8 and 9, pp. 68 and 69.

‡ 7 Pothier, 14.

§ Vide ante.

from that class of exceptions which, under the title of preliminary pleas, or *fin de non procéder*, tend merely to show that the defendant is not bound to answer; by the descriptive title of "*exceptions péremptoires en droit*"; the word *péremptoire* (from the Latin *perimere*, to destroy) being used to express their legal effect. \*

It is obvious that a defendant can have but two sources of defence,—his own strength and the weakness of his adversary; and, consequently, all pleas to the action must be either "*exceptions péremptoires en droit*," or "*défenses au fonds*,"—the former comprehending all pleas to the action which are founded upon the defendant's own strength, that is, upon new facts not stated in the declaration, upon which (having set them forth) they *tender an issue* to the plaintiff; the latter comprehending all pleas to the action which are founded upon the weakness of the plaintiff, that is, upon the intrinsic inefficiency of the case, which he sets forth in his declaration, in fact or in law, upon which they *take issue*.

As every *défense au fonds* refers entirely to the matter which is stated in the declaration, and is granted wholly upon the insufficiency of that matter, in point of fact, or in point of law, to support the plaintiff's suit, a direct negation of the fact, or of the law, is all that is requisite in such pleas to put the right of action safely in issue with respect to the defendant, and to throw the *onus probandi* upon the plaintiff. But where the *demande* must be answered by new facts not stated in the declaration, the defendant, for his own safety, must necessarily set them forth with certainty as to time, place, person, and circumstances; for if he does not, the facts, on which he relies for his defence, cannot benefit him, because they cannot be shown to the court in evidence; it being one among the first principles of pleading, that the court must judge *secundum allegata et probata*; and that although facts only should be stated in pleading, yet all material facts must be set out to enable the court to declare the law, which arises upon such facts, and authorizes a judgment for the defendant (notwithstanding the facts set forth in the plaintiff's declaration), and to apprise the plaintiff of what is meant to be proved, and thereby enable him to deny what is alleged, or to aver new matter in answer to it, and to come prepared with proof, according to the exigencies of the case. †

Pleas of "*défense au fonds*" are divided into two classes. 1. "*Défense au fonds en droit*," which denies the law averred by the plaintiff to be the result of the matters stated in the

\* 1 Bornier, 39.—1 Pigeau, 151.

† Code Civile, tit. 20, art. 1.—Chitty, 217.

declaration; \* and (2.) "*Défense au fonds en fait*," which denies the truth of the matters stated in the declaration.† In the *défense au fonds en droit*, the defendant for "answer *au fonds* to the *demande* of the plaintiff in his declaration contained," avers, "that the allegations of the plaintiff and the matters and things in his declaration set forth and contained, and each and every of them, is and are wholly and altogether unfounded in law, and not sufficient therein for the plaintiff to have or maintain against him (the defendant) the conclusions in his declaration taken, or any or either of them, or the action of him (the said plaintiff) in this behalf," and therefore (by his conclusions) "he prays that, by the judgment of the court, the action of the plaintiff in this behalf may be dismissed."‡ In the *défense au fonds en fait*, the defendant in like manner, for "answer *au fonds* to the *demande* of the plaintiff in his declaration contained," avers, "that the allegations of the plaintiff, and the matters and things in the said declaration contained and each and every one of them, is and are wholly and altogether unfounded in fact and untrue, &c.," and therefore (by his conclusion) "he prays that, by the judgment of the court, the action of him (the said plaintiff) in this behalf be dismissed."§

Pleas of "*exceptions péremptoires en droit*" are, in like manner, divided into two classes: 1. Perpetual § *exceptions péremptoires en droit*; and (2.) temporary *exceptions péremptoires en droit*; and these distinguishing titles are derived from the legal effect of these pleas respectively. Both are equally peremptory, because both equally destroy the action to which they are pleaded, but their ulterior effect is not the same. A judgment in favor of the defendant, upon a perpetual *exception péremptoire en droit*, is a perpetual bar to the action in which it is pronounced and hence the name of "*exception perpétuelle*." But a judgment in favor of a defendant, upon a temporary *exception péremptoire en droit*, does no more than abate the plaintiff's action, until the disability, or other effect of the matter pleaded and allowed, ¶ is removed, and therefore it

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\* 7 Pothier, 14.

† *Ib*,

‡ Rules and orders, p. 244.

§ *Ib*. p. 246.

¶ See 1 Pigeau, p. 150. "*Ces moyens sont appelés exceptions du Latin excipere (exclure) parcequ'ils tendent à exclure le demandeur de poursuivre sa demande soit pour un temps, soit pour toujours.*"

¶ 1 Jousse, C. C., 189. The epithets "perpetue," and "temporales," were applied to exceptions in the Roman law.

is a bar to the action *for a time only*, and hence the title of *exception temporaire*, a plea *ad instantiam perimendam* :

In the perpetual *exception péremptoire en droit*, the defendant, "for answer unto the *demande* of the plaintiff in his declaration contained," sets forth and libels the special facts which constitute the ground of his exception, which he offers to prove "when and as the court shall direct," averring that by reason thereof, "the plaintiff *by law* cannot at any time have or maintain any action against him (the defendant), for or by reason of the matters or things in his declaration set forth and alleged, or of any or either of them"; and therefore (by his conclusion) he prays "that for the causes *aforesaid*, by the judgment of the court, the action of the plaintiff in this behalf may be dismissed." \* In the temporary *exception péremptoire en droit*, the defendant, in like manner, "for answer unto the *demande* of the plaintiff in his declaration contained," sets forth and libels the special facts which constitute the ground of the exception, which he offers "to prove when and as the court shall direct," averring that, by reason thereof, "the plaintiff *by law* cannot, at this time, have or maintain his action against him (the defendant), for by reason of the matters and things in his declaration set forth and alleged, or of any or either of them," and therefore (by his conclusions) he prays "that for the causes *aforesaid*, by the judgment of the court, the action of the plaintiff in this behalf be, for the present, † dismissed."

*Exceptions péremptoire en droit* do not impeach or deny the case stated in the declaration, and therefore cannot, in any instance, involve or call for any consideration of the intrinsic merits of that case; as the *exceptio* of the Roman law and the plea in chancery, "they insist that the matter of the *demande* is not to be put in issue." (Gilbert's *Forum Romanum*, p. 64.) They invariably set forth some new matter, which shows (notwithstanding the matter set forth in the declaration) that the plaintiff's action must by law be dismissed for the present, or

*vide* Harris's *Justinian's Institutes*, lib. 4, tit. 13, § 10, p. 341.—Pothier's *Pandects*, vol. iii., p. 251.—Ferrière *Just. Instit.*, vol. vi., pp. 274 to 278.—Brown's *Practice of the Civil Law*, 1st edition, vol. ii., p. 32. The same distinction prevails in the law of England between abatement and bar, which are sometimes called temporary bar and perpetual bar. *Vide* *Le Bret v. Papillon*, 4 East, 505.

\* Rules and orders, 243, 244.

† Rules and orders, 241, 242.—2 Pothier, 4to., p. 729.—I Pigeau, 199.—*Repertoire*, 8vo., vol. xvii., p. 479. *verbo* *Demande*.

for ever.\* But as the new matter which they set forth is sometimes foreign to the matter set forth in the declaration and sometimes connected with it—sometimes has reference to the merits of the plaintiff's demand, and sometimes has none,—they are distinguished (by reference to that which they allege, and on which they are respectively founded) into "*fins de non recevoir*," and "*fins de non valoir*."† Those exceptions are *fins de non recevoir* in which the matter set forth is sufficient in law (whether the case stated in the declaration be true or false) to authorize a judgment in the defendant's favor, dismissing the plaintiff's action for the present, or for ever, as where the defendant pleads, that the plaintiff is an alien enemy, which is a temporary exception *péremptoire en droit*, or pleads the long prescription of thirty years, which is a perpetual exception *péremptoire en droit*; ‡ and such exceptions are denominated *fins de non recevoir*, because the matter which they plead shows that the plaintiff cannot legally be received or admitted by the court to prosecute the suit which he has instituted. || Those exceptions on the other hand, are *fins de non valoir*, in which the matter set forth necessarily admits and confesses the case stated in the declaration, but avoids or discharges it for the present, or for ever, and is therefore sufficient in law to authorize a judgment in the defendant's favor dismissing the plaintiff's action; as where the defendant pleads "term for payment unexpired," which is an exception *péremptoire en droit temporaire*, or pleads "accord and satisfaction," or "*chose jugée*" (*res judicata*) which are exceptions *péremptoires en droit perpétuelles* and such exceptions are denominated "*fins de non valoir*," because the matter which they plead shows that although the plaintiff may have a legal cause of action hereafter, or heretofore had a legal cause of action, yet, that he cannot now avail himself of it. § *Fins de non recevoir* and *fins de non valoir*

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\* The office of a plea in bar at law or in equity is to confess the right to sue, avoiding that by matter *dehors*—giving the plaintiff an acknowledgement of his right, independent of the matter alleged by the plea,—that is, the plea admits the bill, but interposes matter, which, if true, destroys it. Per Lord Chancellor—6 Vesey, jun., 597.

† 1 Bornier, 39, note 1.

‡ 1 Pothier, 346.

|| 1 Pigeau, 165-8.—L. C. Den. p. 638.

§ Rodier, 75. 1 Bornier, 39. It is a rule in English pleading, that a party justifying must admit the fact, (3rd T. R. p. 298, *Taylor v. Cole*.) Every plea in justification, says *Serjeant Williams in Saunders*, states circumstances which either excuse the fact complained of or show it to be lawful. From

are thus sometimes, in their effect, perpetual—sometimes temporary; but the classes of *exceptions péremptoires en droit péremptuelles* and *exceptions péremptoires en droit temporaires* comprehend the entire list of *fin de non recevoir* and *fin de non valoir*, and the two latter are therefore subdivisions only of the two former. \*

To pleas of *défense au fonds en droit*, or *en fait*, because they are negative pleas and take issue, nothing can be offered on the part of the plaintiff but a general replication, † by which the issue being completed, the pleadings are concluded. But to pleas of exception, because they are affirmative pleadings, and tender an issue, the plaintiff must put in answer, which is either general or special.

A general answer takes issue upon the matter of the exception, by a general denegation; ‡ and such general answer completes the issue, and consequently, concludes the pleadings; || but a special answer tenders a new issue by setting forth fresh matter in answer to the matter of the exception, which is sufficient to destroy it, and in such case the issue is not completed by a general replication, on the part of the defendant, to such special answer, § although the legislature has forbid the use of all further pleadings. ¶ \*\*

its nature. therefore, it must confess the fact, otherwise it is no justification, *but a denial*, of the fact, and amounts to the general issue.—William's Saunders, vol. i., p. 28, notes 1 and 14; note 3 cites Taylor v. Cole, 3 T. R. 298; Gibbons v. Pepper, 1 L. Raym. 38; Wils. 411, 412

\* Rodier, 75, 76.

† Rules and orders, 231.

‡ Rules and orders, 220, 222, 224.

|| Rules and orders, sec. 7, art. 21, p. 76.

§ *Ib.* 229.

¶ Ord. Geo. III, c. 2, s. 13.

\*\* The Code of Procedure now allows other pleadings by permission of the court.—Art. 148, § 3, p. 24, *post.*





**STATUTES**  
**AND**  
**PROCLAMATION**  
**IN CONNECTION WITH**  
**THE CODE OF CIVIL PROCEDURE**  
**OF**  
**LOWER CANADA.**



## AN ACT

### RESPECTING THE CODIFICATION OF THE LAWS OF LOWER CANADA RELATIVE TO CIVIL MATTERS AND PROCEDURE.

*(Consolidated Statutes for Lower Canada, Chapter 11.)*

**WHEREAS** the laws of Lower Canada in civil matters are mainly those which, at the time of the cession of the country to the British Crown, were in force in that part of France then governed by the custom of Paris, modified by provincial statutes, or by the introduction of portions of the law of England in peculiar cases; and it therefore happens that the great body of the laws, in that division of the province, exist only in a language which is not the mother tongue of the inhabitants thereof of British origin, while other portions are not to be found in the mother tongue of those of French origin; And whereas the laws and customs in force in France, at the period above mentioned, have there been altered and reduced to one general code, so that the old laws still in force in Lower Canada are no longer re-printed or commented upon in France, and it is becoming more and more difficult to obtain copies of them, or of the commentaries upon them; And whereas the reasons afore-

said, and the great advantages which have resulted from codification, as well in France as in the state of Louisiana, and other places, render it manifestly expedient to provide for the codification of the civil laws of Lower Canada: Therefore, her majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The governor may appoint three fit and proper persons, barristers of Lower Canada, to be commissioners for codifying the laws of that division of the province in civil matters, and two fit and proper persons, being also such barristers, to be secretaries to the commission, one of whom shall be a person whose mother tongue is English but who is well versed in the French language, and the other a person whose mother tongue is French but who is well versed in the English language.—20 V., c. 43, s. 1.

2. Any judge or judges of the court of queen's bench or of the superior court of Lower

Canada, may be appointed a commissioner or commissioners under this act; and if any such judge is so appointed, the governor may appoint any barrister of at least ten years' standing at the bar of Lower Canada, to be and act as an assistant judge of either of the said courts,—or any judge of the superior court to be and act as an assistant judge of the court of queen's bench, and a barrister as aforesaid to supply his place as judge of the superior court, as an assistant judge thereof,—for and during the time that the judge appointed a commissioner under this act, continues to be such commissioner :

2. Every assistant judge so appointed shall, during the said time have and exercise all the powers and authority and perform all the duties by law vested in or assigned to a judge of the court of which he is appointed an assistant judge, as if he had been appointed a judge of such court, and shall reside at the place to be named for that purpose from time to time by the governor and in case of the vacancy of the office of any such assistant judge another may be appointed in his stead in like manner and with like effect.—20 V. c. 43, s. 2.

3. The said commissioners and secretaries shall hold their offices during pleasure, and in cases of vacancy, the governor may appoint another or others to fill the same, and so on until the work is completed.—*Ibid.*, s. 3

4. The said commissioners shall reduce into one code, to be called the Civil Code of Lower Canada, those provisions of the laws of Lower Canada which relate to civil matters and are of a general and permanent character, whether they relate to commercial cases or to those of any other nature; but they shall not include in the said code any of the laws relating to the seigniorial or feudal tenure.—*Ibid.*, s. 4.

5. The said commissioners shall reduce into another code, to be called the Code of Civil Procedure of Lower Canada, those provisions of the laws of Lower Canada which relate to procedure in civil matters and cases, and are of a general and permanent character.—*Ibid.*, s. 5.

6. In framing the said codes, the said commissioners shall embody therein such provisions only as they hold to be then actually in force, and they shall give the authorities on which they believe them to be so; they may suggest such amendments as they think desirable, but shall state such amendments separately and distinctly, with the reasons on which they are founded.—*Ibid.*, s. 6.

7. The said codes shall be framed upon the same general plan, and shall contain, as nearly as may be found convenient, the like amount of detail upon each subject, as the French codes known as the Code Civil, the Code de Commerce, and the Code de Procédure Civile.—*Ibid.*, s. 7.

8. The commissioners shall, from time to time report to the governor their proceedings and the progress of the work entrusted to them, and shall, in all matters not expressly provided for by this act, be guided by the instructions they receive from the governor; and whenever they think any section or division of the work sufficiently advanced for the purpose, they shall cause the same to be printed, and transmit a sufficient number of printed copies thereof with their report to the governor:

2. And if the governor in council thinks it advisable, he shall cause one or more of such copies to be transmitted to each of the judges of the court of queen's bench and superior court of Lower Canada, with a request that he will return the same, with his remarks thereon by a day to be named in the letter containing such request.—20 Vic., c. 43, s. 8.

9. Each of the said judges shall examine the portion of the commissioners' work so submitted to him, and return the same by the day named as aforesaid, with his remarks, and he shall more especially examine carefully that part of the work purporting to state the law then in force, and report distinctly his opinion, whether the law as it then stands, is correctly stated therein, and in what paragraph or paragraphs (if any) it is incorrectly stated, with his reasons and authorities, and a draft of the amendments which ought in his opinion, to be

made in such paragraph or paragraphs, in order that the law may be correctly stated therein.—*Ibid.*, s. 9.

10. The judges or any of them may, in their report on any portion of the said work referred to them, make suggestions for the amendment of the law contained in such portion with the reasons on which such suggestions are founded.—*Ibid.*, s. 9.

11. At any time when any portion of the said work is before the judges for their report, they, or any of them may confer with the commissioners or any of them, touching the same; and the commissioners shall, in any such conference give all such information and explanation as it is in their power to afford and as the judges may require, relative to any statement of the law as it then stands, or any suggestion for its amendment, which the commissioners have made in such portion of their work as aforesaid.—*Ibid.*, s. 11.

12. The reports of the judges shall be communicated to the commissioners, who shall make such corrections in their work as they find advisable after having taken into consideration the reports and suggestions of the judges; but if any of the judges do not send in their reports by the day named for that purpose, this shall not prevent the codes from being completed and submitted to the legislature as hereinafter provided.—*Ibid.*, s. 12.

13. The commissioners shall, from time to time, incorporate, with the proper portions of the said codes, such amendments of the actual law as the governor in council thinks it right to recommend for adoption by the legislature, after considering the reports of the commissioners, and those of the judges, if any, but such amendments shall be carefully distinguished from the actual law.—20 Vic., c. 43, s. 13.

14. When the said codes, or either of them, are completed, with such amendments as last mentioned, printed copies thereof and of the reports of the commissioners, and of the judges if any, shall be laid before the legislature, in order that such code or codes may be made law by enactment; and if it is found advisable that either of the said codes be completed and submitted to the legislature before the other, the Civil Code of Lower Canada shall be the first so completed and submitted :

2. Either house may propose any amendments to either code, but such amendments shall be proposed by resolutions which may be passed by one house and sent to the other for its concurrence, and shall be subject to amendment by the other, and to be otherwise dealt with as a bill might be, until finally agreed to by both houses, and shall then be communicated to the commissioners, who shall, with all possible despatch, incorporate the substance of the amendments so agreed to with the

proper code which may then be passed as a bill, at the same or any future session.—*Ibid.*, s. 14.

15. The said codes and the reports of the commissioners shall be framed and made in the French and English languages, and the two texts, when printed, shall stand side by side.—*Ibid.*, s. 15.

16. Any two of the commissioners may make any report or do any other thing which the commissioners are hereby empowered to do; saving the right of the third commissioner, if so advised to make a separate report, or enter his dissent and the reasons thereof in the minutes of the proceedings of the commission.—*Ibid.*, s. 16.

17. The commissioners shall be remunerated for their services at such rate as the governor in council shall determine, not exceeding sixteen dollars per diem to each commissioner while employed in the performance of his duties, nor five thousand dollars per annum to any commissioner; and the said secretaries shall be remunerated for their services at such rate not exceeding three thousand four hundred dollars per annum, as the governor in council shall determine, but the said secretaries shall give their whole time to the duties of their office.—*Ibid.*, s. 17.

18. If any judge of the court of queen's bench or superior court for Lower Canada is appointed such commissioner as aforesaid, he shall, while acting as such, receive no re-

muneration as commissioner, except the excess (if any) of the remuneration of a commissioner over his salary as judge; and any assistant judge to be appointed to supply the place of any such judge while acting as commissioner, shall receive a salary to be fixed by the governor in council, but not to exceed the highest salary of a puisné judge of the court to which he is appointed; so that the charge upon the province shall not be increased by the appointment of a judge or judges as commissioners.—*Ibid.*,—s. 18.

19. The commissioners shall hold their meetings at such place as shall be appointed by the governor, and the secre-

taries shall keep minutes of the proceedings at such meetings.—*Ibid.*, s. 19.

20. The remuneration to the commissioners and secretaries, with such expense as may be incurred by them for travelling expenses, printing, stationery and other things necessary to the due performance of their duties under the act, shall be paid by warrant of the governor, out of the consolidated revenue fund, as shall also the rent of their place of meeting, if such place be not in any public building.—*Ibid.*, s. 20.

21. All moneys expended under this act shall be accounted for to her majesty and to the legislature, in the manner provided by law.—*Ibid.*, s. 21.



## AN ACT

### RESPECTING THE CODE OF CIVIL PROCEDURE OF LOWER CANADA.

(29-30 Vict., Chap. 25.)

**W**HEREAS the commissioners appointed under the second chapter of the consolidated statutes for Lower Canada, to codify the laws of that division of the province in civil matters, have completed that portion of their work mentioned in the said act as the *Code of Civil Procedure of Lower Canada*, embodying therein such provisions only as they hold to be now actually in force, and giving the authorities on which they believe them to be so, and have suggested such amendments as they think desirable, stating such amendments separately and distinctly, with the reasons on which they are founded; and have in all respects complied with the requirements of the said act as regards the said code and amendments; and whereas the said code, with the amendments suggested by the said commissioners, has, by command of the governor, been laid before the legislature in order that the said code, with such amendments as may be adopted by the legislature, may be made law by enactment; and whereas such of the amendments suggested by the commissioners, and such other amendments as are mentioned in the resolutions con-

tained in the schedule hereunto annexed, have been finally agreed to by both houses; therefore, her majesty, by and with the advice and consent of the legislative council and assembly of Canada, enacts as follows:—

1. The printed roll attested as that of the said code of civil procedure of Lower Canada, under the signature of his excellency the governor-general, that of the clerk of the legislative council, and that of the clerk of the legislative assembly, and deposited in the office of the clerk of the legislative council, shall be held to be the original thereof reported by the commissioners as containing the existing law without amendment; but the marginal notes, and the references to existing laws or authorities at the foot of the several articles of the said code, shall form no part thereof, and shall be held to have been inserted for convenience of reference only, and may be omitted or corrected.

2. The commissioners under the act mentioned in the preamble of this act shall incorporate the amendments mentioned in the resolutions contained in the schedule to this act, with

the said code of civil procedure as contained in the roll aforesaid, adapting their form and language (when necessary) to those of the said code, but without changing their effect, inserting them in their proper places, and striking out of the said code any part thereof inconsistent with the said amendments.

3. The governor may also select any acts and parts of acts passed during the present session, which he may deem it advisable to be incorporated with the said code, and may cause them to be so incorporated by the said commissioners, in the manner hereinbefore prescribed with respect to the amendments above mentioned, striking out of the code or amendments any part thereof inconsistent with the acts or parts of acts incorporated therewith.

4. The commissioners may alter the numbering of the titles and articles of the said code or their order if need be, and make the necessary changes in any reference from one part of the code to another, and may correct any misprint or error, whether of commission or omission, or any contradiction or ambiguity, in the original roll, but without changing its effect.

5. So soon as the said work of incorporation and correction shall have been completed, the said commissioners shall cause the code to be reprinted as amended and corrected, carefully distinguishing in such reprint the substantive amendments and additions made in

or to the original roll, and shall submit the same to the governor, who may cause a correct printed roll thereof, attested under his signature, and countersigned by the provincial secretary, or one of the assistant provincial secretaries, to be deposited in the office of the clerk of the legislative council, which roll shall be held to be the original thereof; any such marginal notes or references thereon as are mentioned in section one, being held to form no part thereof, but to be inserted for convenience of reference only.

6. The governor in council may, after such deposit of the roll last mentioned, declare by proclamation the day on, from, and after which the said code, as contained in the said roll, shall come into force and have effect as law, by the designation of "The Code of Civil Procedure of Lower Canada," and upon, from and after such day the said code shall be in force accordingly.

7. The laws relating to the distribution of the printed copies of the statutes shall not apply to the said code, which shall be distributed in such numbers and to such persons only as the governor in council may direct.

8. This act and the proclamation mentioned in section six, shall be printed with the copies of the said code printed for distribution as aforesaid.

9. So much of the act cited in the preamble as may be inconsistent with this act is hereby repealed.



PROVINCE OF } J. MICHEL.  
CANADA. }

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, QUEEN, Defender of the Faith, &c., &c., &c.

To all to whom these presents shall come, or whom the same may in any wise concern—  
GREETING :

GEO. ET. CARTIER, } WHEREAS in  
Atty.-Genl. } and by a certain act of the legislature of the province of Canada passed in the session thereof held in the twenty-ninth and thirtieth years of our reign, intituled : "An act respecting the code of civil procedure of Lower Canada," it is, amongst other things in effect, enacted that the printed roll attested as that of the said code of civil procedure of Lower Canada, under the signature of his excellency the governor-general, that of the clerk of the legislative council, and that of the clerk of the legislative assembly, and deposited in the office of the clerk of the legislative council, shall be held to be the original thereof, reported by the commissioners as containing the existing law without amendment; but the marginal notes, and the references to existing laws or authorities at the foot

of the several articles of the said code, shall form no part thereof, and shall be held to have been inserted for convenience of reference only, and may be omitted or corrected; that the commissioners appointed under the second chapter of the consolidated statutes for Lower Canada, to codify the laws of that division of the province in civil matters, shall incorporate the amendments mentioned in the resolutions contained in the schedule to that act with the said code of civil procedure, as contained in the roll aforesaid, adapting their form and language (when necessary) to those of the said code, but without changing their effect, inserting them in their proper places, and striking out of the said code any part thereof inconsistent with the said amendments; that the governor may also select any acts and parts of acts passed during that session, which he may deem it advisable to be incorporated with the said code, and may cause them to be so incorporated by the said commissioners, in the manner hereinbefore prescribed with respect to the amendments above mentioned, striking out of the code or amendments any part thereof inconsistent with the acts or parts of acts incorporated there-

with; that the commissioners may alter the numbering of the titles and articles of the said code or their order, if need be, and make the necessary changes in any reference from one part of the code to another, and may correct any misprint or error, whether of commission or omission, or any contradiction or ambiguity in the original roll, but without changing its effect; that so soon as the said work of incorporation and correction shall have been completed, the said commissioners shall cause the code to be reprinted as amended and corrected, carefully distinguishing in such reprint the substantive amendments and additions made in or to the original roll, and shall submit the same to the governor, who may cause a correct printed roll thereof, attested under his signature, and countersigned by the provincial secretary or one of the assistant provincial secretaries, to be deposited in the office of the clerk of the legislative council, which roll shall be held to be the original thereof; any such marginal notes or references thereon as are mentioned in section one, being held to form no part thereof, but to be inserted for convenience of reference only; and that the governor in council may, after such deposit of the roll last mentioned, declare by proclamation the day on, from and after which the said code as contained in the said roll shall come into force and have effect as law, by the designation of "The Code of Civil Procedure

of Lower Canada," and upon, from and after such day the said code shall be in force accordingly; and whereas the said commissioners have incorporated the amendments mentioned in the resolutions contained in the schedule to the said Act with the said code of civil procedure as contained in the roll aforesaid, having adapted their form and language to those of the said code but without having changed their effect, having inserted them in their proper places, and having struck out of the said code any part thereof inconsistent with those amendments; and whereas the said commissioners have been duly directed to incorporate, and have incorporated with the said code such acts and parts of acts passed during the last session of the legislature of Canada, as were deemed advisable to be incorporated therewith, and have struck out of the said code and amendments any part thereof inconsistent with such acts or parts of acts so incorporated; and whereas the said commissioners have altered the numbering of the titles and articles of the said code, and have made the necessary changes in any reference from one part of the code to another, and have corrected any misprint or error, whether of commission or omission in the original roll, but without changing its effect; And whereas so soon as the said work of incorporation and correction was completed, the said commissioners have caused the code to be reprinted as amend-

ed and corrected, having carefully distinguished in such reprint the substantive amendments and additions made in or to the original roll, and have submitted the same to the administrator of the government of our said province of Canada; and whereas all the provisions of the first five sections of the above act have been duly carried into effect; and whereas the administrator of the government of our said province of Canada, after the provisions contained in the first five sections of the said act had been as above and in every other particular duly carried into effect, hath caused a correct printed roll of the said code of civil procedure, attested under his signature, and countersigned by the provincial secretary, to be deposited in the office of the clerk of the legislative council; and whereas the said administrator of the government of our said province of Canada, after such deposit of the said printed roll of the said code of civil procedure, hath, by and with the advice and consent of our executive council for the said province, fixed the twenty-eighth day of June instant, as the day on, from and after which the said code, as contained in the said roll, shall come into force and have effect as law, by the designation of "The Code of Civil Procedure of Lower Canada"; Now know ye, that by and with the advice of our executive council for the said province of Canada, we do, by this our royal proclamation, declare that on, from and

after the twenty-eighth day of June instant, the said last-mentioned roll, attested under the signature of the administrator of the government of our said province of Canada, countersigned by the provincial secretary and deposited in the office of the clerk of the legislative council of the said province as aforesaid, shall come into force and have effect as law by the designation of "The Code of Civil Procedure of Lower Canada"; of all which our loving subjects of our said province, and all others whom these presents may concern, are hereby required to take notice and to govern themselves accordingly.

In testimony whereof, we have caused these our letters to be made patent, and the great seal of our said province of Canada to be hereunto affixed; witness, our trusty and well-beloved Sir John Michel, K. C. B., administrator of the government of our province of Canada, and lieutenant-general commanding our forces therein, &c., &c., &c. At our government house, in our city of Ottawa, in our said province of Canada, this twenty-second day of June, in the year of our Lord, one thousand eight hundred and sixty-seven, and in the thirty-first year of our reign.

By order,

WM. McDUGALL,  
*Secretary.*

## A N A C T

TO AMEND CHAPTER 90 OF THE CONSOLIDATED STATUTES FOR LOWER CANADA, WITH RESPECT TO JUDGMENTS RENDERED OUT OF THIS PROVINCE.

*(Assented to 28 Dec. 1876.)*

**H**ER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows :

1. Sections one, two, three and four of chapter ninety of the consolidated statutes for Lower Canada are repealed and are replaced by the following sections :—

“1. In any suit brought in this province upon a judgment rendered out of the Dominion of Canada, any defence set up or that might have been set up to the original suit, may be pleaded to the suit upon such judgment.

2. In any suit brought in this province upon a judgment rendered by a provincial court in any other province of the Dominion of Canada, in a suit in which personal service was made on the defendant within such other province, or in which in the absence of such personal service the defendant appeared, no defence that might have been set up to the original suit can be made and pleaded to the suit upon such judgment.

3. In the case of a suit

against a corporation, service within such other province on the officer or officers indicated in the charter or in the law under which the charter has been granted, or if such officer or officers cannot be found within such other province, service therein on any person through whom by the law of such other province a valid service on such corporation can be made, shall be held to be personal service to bring the case under the provisions of the preceding section.

4. In any suit brought in this province upon a judgment rendered by a provincial court in any other province of the Dominion of Canada, in a suit in which the defendant was not personally served within such other province, or in which in the absence of personal service he did not appear, any defence that might have been set up to the original suit, may be made and pleaded to the suit upon such judgment.”

2. This act shall not apply to judgments now rendered nor to pending cases.

## AN ACT

TO AMEND ARTICLES 2 AND 3 OF THE CODE OF CIVIL PROCEDURE,  
RESPECTING NON-JURIDICAL DAYS.

**W**HEREAS it is necessary to amend articles 2 and 3 of the Code of Civil Procedure, respecting non-juridical days, and to remove certain doubts on this subjects; Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, declares and enacts as follows:

1. The word "Governor" in the second article of the Code of Civil Procedure, means indifferently, the Governor General of Canada or the Lieutenant Governor of this Province, as the case may be.

2. The first of July, the anniversary of the day on which the British North America Act came into force, shall in future, be considered a non-juridical day as if it had been mentioned in article 2 of the said Code, and if the first of July should happen to fall on a Sunday, then the second of July shall be

considered a non-juridical day.

3. Proceedings and sales which have taken place on a day of Thanksgiving, ordered either by the Governor General or the Lieutenant Governor, prior to the passing of this act, shall be deemed valid as if they had taken place on the day following such Thanksgiving day.

4. Article 3 of the said code, applies to sales announced to be made by authority of justice.

5. The present act shall, in so far as it shall apply, form part of the act respecting the interpretation of the statutes of this province, 31 Vict., chap. 7.

6. Nothing in this act shall apply to any objection already raised before the courts in any case now pending.

7. The present act shall come into force on the day of its sanction.

AN ACT TO AMEND ARTICLE 49 OF THE CODE OF CIVIL PROCEDURE.

**H**ER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. Article 49 of the Code of Civil Procedure is amended by adding to the second paragraph thereof, the following words:

"If the defendant has no domicile or permanent resi-

dence in this province, the mention of his surname alone will suffice, if his christian name cannot be ascertained, provided he be otherwise sufficiently designated in the writ and that such writ be served upon him personally."

2. This act shall come into force on the day of its sanction.

## A N A C T

TO AMEND ARTICLE 1068 OF THE CODE OF CIVIL PROCEDURE WITH  
RESPECT TO THE SERVICE AND EXECUTION OF CERTAIN WRITS  
ISSUED OUT OF THE CIRCUIT COURT IN CERTAIN CASES.

**H**ER MAJESTY by and with the advice and consent of the Legislature of Quebec, enacts as follows :

1. The following paragraph is added to article 1068 of the Code of Civil Procedure :

“Any writ of summons, subpoena or writ of execution, issued out of any Circuit Court, in any county in this province, may be served by any bailiff residing in the judicial district in which said county is situate, but no more costs and emoluments for serving or executing such writ shall be allowed or taxed against any defendant, than would have been allowed had such writ or subpoena been served by the bailiff residing

nearest to the residence of the defendant; provided nevertheless, in any case in which the plaintiff establishes to the satisfaction of the clerk of the court, or the judge exercising jurisdiction in the district in which such writ issues, that such writ or subpoena should be addressed to and executed by some other bailiff, it may be so addressed and executed; in which case the costs to be taxed against the defendant, or other person, shall be taxed as from the residence of such bailiff, and for the distance actually travelled by him.

2. This act shall come into force on the day of its sanction.



## ABBREVIATIONS USED IN THIS WORK.

Anc. Den.—Ancien Denizart.	Lac.—Lacombe.
A. de Not.—Actes de Notoriété.	Lau.—Laurière.
Arch.—Archbold.	L. C. J.—Lower Canada Jurist.
	L. C. R.—Lower Canada Re- ports.
Bour.—Bourjon.	L. Dict.—Law Dictionary.
c.—Chapter.	L. N.—The Legal News.
C. C.—Circuit Court.	N. Den.—Nouveau Denizart.
C. C.—Code Civil.	Ord.—Ordonnance or Ordin- ance.
C. N.—Code Napoléon.	P. C.—Procédure Civile.
C. P. C.—Code de Procédure Civile ( <i>of France.</i> )	Pig.—Pigeau.
Cou.—Couchot.	P. or Pot.—Pothier.
C. P. Gen.—Code de Procédure de Genève.	Prêt à us.—Prêt à usage, etc.
C. P. L.—Code of Procedure of Louisiana.	Prop.—Propriété.
C. S. L. C.—Consolidated Sta- tutes of Lower Canada.	Q. B.—Queen's Bench.
C. V. A.—Court of Vice-Admi- rality.	Q. L. R.—Quebec L. Reports.
Den.—Denizart.	R. de L.—Revue de Législa- tion.
Dep.—Depot.	Rép.—Répertoire.
Dur.—Duranton.	R. of P.—Rule of Practice.
E. & Ord.—Edits et Ordonnan- ces.	R. L.—Revue Légale.
Fer.—Ferrière.	S. C.—Superior Court.
Gen.—Code Proc. Genève.	s.—Section.
Gu.—Guyot, Répertoire de la Jurisprudence.	ss.—Sections.
Hein.—Heinneccius.	Ser.—Serpillon.
Her. Vte. des Imm.—Hericourt, Vente des Immeubles.	T. Rep.—Term Reports.
Houy.—Houyvet.	Toul.—Toullier.
Hyp.—Hypothec.	Trop. Nantis.—Trop long sur le Nantissement.
	V. or Vic.—Victoria.
	V. A.—Vice-Admiralty.

ARTICLES OF THE CODE OF CIVIL PROCEDURE OF  
LOWER CANADA, AMENDED BY PROVINCIAL ACTS  
SINCE ITS PROMULGATION.

1868.

By 31 Vic., c. 7, s. 2, § 25 :—art. 2.

By 31 Vic., c. 13, s. 4 :—arts. 603, 648, 703, 768, 770, 914, 951,  
954 and 974.

1869.

By 32 Vic., c. 20, s. 2 :—art. 470.

By 32 Vic., c. 21, s. 1 :—art. 1062.

By 32 Vic., c. 26, s. 1 :—arts. 1236, 1237.

1870.

By 33 Vic., c. 13 :—arts. 360, 376.

By 33 Vic., c. 17 :—arts. 48, 84, 129, 248, 461, 555, 559, 606,  
809, 836, 857, 899, 1081 and 1082.By 33 Vic., c. 18 :—arts. 239, 240, 263. 280, 284, 285, 287, 288  
and 1075.By 34 Vic., c. 4 :—arts. 238, 263, 265, 463, 494, 569, 663, 664,  
1054, 1095, 1115, 1118 and 1179.

1871.

By 35 Vic., c. 5 :—arts. 615, 860 and 883.

By 35 Vic., c. 7 :—arts. 1267 *et seq.*By 35 Vic., c. 6 :—arts. 64, 68, 128, 238, 252, 263, 264, 284 *et*  
*seq.*, 397, 398, 423, 511, 560, 570, 571, 834, 952, 963, 998,  
1023, 1081 and 1261.

1872.

By 36 Vic., c. 20 :—art. 31.

By 36 Vic., c. 10 :—arts. 465 and 495.

1873-74.

By 37 Vic., c. 6 :—arts. 494 and 1115.

By 37 Vic., c. 11 :—art. 1192.

1875.

By 38 Vic., c. 9 :—art. 69.

By 38 Vic., c. 10 :—art. 1080.

By 38 Vic., c. 12 :—arts. 558 and 628.

By 38 Vic., c. 19 :—art. 1355.

1876.

By 40 Vic., c. 14 :—(Suits on foreign judgments.)

1878.

By 41 Vic., c. 10 :—(Proof of heirship.)

By 41 Vic., c. 11 :—arts. 1298 and 1305.

By 41 Vic., c. 12 :—art. 873.

By 41 Vic., c. 13 :—art. 997.

By 41 Vic., c. 14 :—(Writs of injunction.)

By 41 Vic., c. 15 :—(Notices of Sheriff's sales to hypothecary  
creditors.)

1879.

By 43 Vic., c. 19 :—arts. 2 and 3.

By 43 Vic., c. 20 :—art. 49.

By 43 Vic., c. 21 :—art. 1068.

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## CODE OF CIVIL PROCEDURE.

### PART FIRST.

#### GENERAL PROVISIONS.

1. The place, time, and duration of the sittings of the different courts are regulated by particular statutes. The court may, according to circumstances, shorten the terms thus fixed, or it may prolong them, by adjournment, either from day to day, or to any subsequent day before the following term; and at any sitting, held in virtue of such adjournment, the court may hear and determine all cases brought before it, whether such cases were begun before or since such adjournment. Courts cannot sit on non-judicial days; nor can they sit between the ninth of July and the first of September, except as regards proceedings concerning corporations and public offices, oppositions to marriages, applications for writs of *habeas corpus* in civil matters, suits before commis-

sioners' courts for the summary trial of small causes, suits between lessors and lessees, the proceedings regulated by the first title of the second book of part second, (arts. 796-876,) and as regards the districts of Gaspé, of Saguenay, and of Chicoutimi, and the Court of Queen's Bench.—C. S. L. C., c. 78, ss. 16, 17, 18; c. 82, s. 4; c. 83, ss. 15, 37, 79; c. 40, ss. 5, 6.

2. The following days are non-judicial:

1. Sundays;

2. New Year's Day, the Epiphany, the Annunciation, Good Friday, the Ascension, Corpus Christi, St. Peter and St. Paul's Day, All Saints' Day, [the Conception,] and Christmas Day;

3. [The birthday of the Sovereign;]

[Easter-Monday and Ash-Wednesday. — 31 Vict., cap.

NOTE—The changes and additions made, in virtue of the statute of 1866, intituled "*An Act respecting the Code of Civil Procedure of Lower Canada*," and those contained in the schedule of resolutions appended to the said statute, are in this Code inserted between brackets [ ].

7, sec. 2, § 25 Q.]

[*Dominion Day*.—43 Vict., cap. 19, sec. 2, v. p. xi ante.]

4. Any day appointed by royal proclamation or by proclamation of the governor as a day of general fast or thanksgiving; [but any writ of summons, or other proceeding, which, before such proclamation, has been made returnable on a day so fixed, may be returned on the next following juridical day.]—12 V., c. 10, 5; c. 22, s. 26;—C. S. L. C., c. 64, s. 32;—C. S. C., c. 5, s. 6, § 12;—C. P. L. 207.

3. If the day on which any thing ought to be done in pursuance of the law is a non-juridical day, such thing may be done with like effect on the next following juridical day.—C. S. L. C., c. 82, s. 5.

4. Persons present at sittings of the courts must remain uncovered, and in silence.—C. P. C. 88.

5. All orders given by the court or a sitting judge for the maintenance of good order during the sittings must be instantly obeyed. The word "judge" used alone, either in this code, or in the civil code, means in like manner the chief-justice or any assistant judge of the same court, unless the contrary is expressed.—*Ibid*.

6. The provisions of the two last preceding articles must likewise be observed wherever judges are in the exercise of their functions.—*Ibid*.

7. Any person who, during the sitting of the court or of a judge, disturbs order, utters

signs of approbation or disapprobation, or refuses to withdraw or to obey the orders of the judge, or the admonitions of the criers or other officers of the court, may be condemned at once to a fine or imprisonment, or both, according to the discretion of the court or judge. *Ibid*. 89.—1 Tidd's Practice, p. 479, 480.—41 Geo. III, c. 7, s. 16.—C. P. C. Louis., 130, 131, 132.—Morin, *Discipl. des Cours*, Nos. 113, 151, 231, 604.—Guyot, *Rep. vo. Audience*, 733-5.—Merlin, *Rep. vo. Audience*, § 3.—Toulins, *L. Dict. vo. Contempt, vo. Courts*.—C. P. L. 131, 132.

8. If the disturbance is caused by a person discharging any function before the court, he may, in addition to the punishment imposed in the preceding article, be suspended from such function.—C. P. C. 90.

9. The courts, in all cases brought before them, may, according to circumstances, even of their own accord, pronounce orders or reprimands, and suppress writings, or declare them libellous.—C. P. C. 1036.

10. The court or presiding judge may appoint an interpreter and allow him a reasonable compensation, which forms part of the costs of the suit.—C. S. L. C., c. 83, s. 36.

11. Any court or any judge thereof, may require an oath when it is deemed necessary, and may, in such case, as well as in any case when an oath is required by law, or the rules of practice, administer the same.

12. Whoever seeks to obtain a thing or a right which is denied him, must sue for it before the proper court.—C. P. Genève, 1.—Pothier, *Proc. Civ.* 2.—C. P. L. 75.

13. No person can bring a suit at law unless he has an interest therein.—2 Prevôt de la Jannès, p. 367.—1 Pigeau, pp. 41, 61, 62.—C. P. L. 15

14. No person can be a party to a suit, either as claimant or defendant, in any form whatever, unless he has the free exercise of his rights, saving where special provisions apply. --Those who have not the free exercise of their rights must be represented, assisted or authorized in the manner prescribed by the laws which regulate their particular status or capacity.--All foreign corporations or persons, duly authorized under any foreign law to appear in judicial proceedings, may do so before any court in Lower Canada.--Any person who, according to the laws of a foreign country, is authorized to represent a person who has died or made his will therein, leaving property in Lower Canada, may also appear as such in judicial proceedings before any court in Lower Canada.--1 Pigeau, 63 *et suiv.*—C. P. Genève, 2.—C. P. C. Louis, cc. 5, 6.—C. S. L. C., c. 91, ss. 1, 2.

15. Several causes of action may be joined in the same suit, provided they are not incompatible, or contradictory, that they seek condemnations of a like nature, that their joinder is not prohibited by some express provision, and that they

are susceptible of the same mode of trial.--A creditor cannot divide his debt for the purpose of suing for the several portions of it by different actions.--1 Pigeau, 38.--Ord. 1667, tit. xx., art. 6.--C. P. C. Louis, 148, 149, 150, 151.--O'Neil *vs.* Atwater, 28 June, 1855, Montreal. -- Philips & Napier, Montreal, 30 Dec. 1854. --Tidd's Practice, 9-12. -- 3 Rev. de Lég. L. C. 38.--Ross *vs.* Donégani, Montreal, 15 April 1850.--C. N. 1346.--See specially *Dufresne & Bergeron*, Q. B. Montreal, 22 June, 1876.

16. No judicial demand can be adjudicated upon unless the party against whom it is made has been heard or duly summoned.--1 Pigeau, 489.--C. P. Genève, 3.--Seligman, 24.

17. The court cannot adjudicate beyond the conclusions of a suit, but it may reduce them and grant them only in part.--Ord. 1667, tit. 35, art. 34.--C. P. L. 155.

18. A party who brings a suit for less than he is entitled to, upon the same cause of action, may remedy the omission by an incidental supplementary demand in the same suit before judgment rendered. —C. P. Louis, 156, 157.—1 Pigeau, 337.

19. No person can use the name of another to plead, except the crown, through its recognized officers. Tutors, curators and others representing persons who have not the free exercise of their rights, plead in their own name in their respective qualities. Corporations plead in their corporate

name.—2 Loisel Instit. liv. 4 tit. iii, art. 5;—liv. 3, tit. ii, art. 4.

20. In any judicial proceeding it is sufficient that the facts and conclusions be distinctly and fairly stated, without any particular form being necessary, and such statements are interpreted according to the meaning of words in ordinary language.—C. S. L. C., c. 83, ss. 77, 78.—C. O. P. Louis., 161. (Art. 144 *post.*)

21. All provisions and rules concerning procedure are interpreted with reference to each other and in such a manner as to give them all the effect intended; and whenever this code does not contain any provision for enforcing or maintaining some particular right or just claim, or any rule applicable thereto, any proceeding adopted which is not inconsistent with law or the provisions of this code is received and held to be valid.—C. S. L. C., c. 82, s. 1.

22. No public officer or other person fulfilling any public duty or function can be sued for damages by reason of any act done by him in the exercise of his functions, nor can any verdict or judgment be rendered against him, unless notice of such suit has been given him at least one month before the issuing of the writ of summons.—Such notice must be in writing, it must specify the grounds of the action, must be served upon him personally or at his domicile, and must state the name and residence of the

plaintiff's attorney or agent.—C. S. L. C., c. 100, s. 1.

23. Any party to a suit may appear and plead either in person or through the ministry of an attorney at law.—25 Geo. III., c. 2, ss. 1, 36.

24. Neither the day of service nor the terminal day is counted in the delays fixed for summoning.—Delays continue to run upon Sundays and holidays; but if a delay expires on a holiday, it is of right extended to the next following day.—The same rule applies to all other delays in procedure.—C. S. L. C., c. 110, s. 1, § 2.—1 Carré et Chauveau, P. lij. no. 109,—1 Pigeau, 393.—Guyot, Rép. vo. Delai, p. 344.—Ord. 1667, tit. iii., art. 6.—Lavielle, Études sur la Procédure, p. 95.—C. P. C. 1033.—C. P. L. 318.

25. Whenever a record is required by law to be transmitted from one court to another, or to a different place, the transmission may be effected through the post-office, and the party requiring it is bound to advance the postage to the person charged to make such transmission; and for any delay caused by the neglect of such party to pay such postage, he is deemed to be in fault. With the consent of all the parties, the record may be transmitted by any other means.—C. S. L. C., c. 82, s. 6.

26. [The provisions of article 17 of the Civil Code apply to this Code. Any copy of this Code, whether designated as *Code of Civil Procedure of Lower Canada*, or as *The Code*

of *Civil Procedure of Lower Canada*, or any copy of the Civil Code, whether designated as *Civil Code of Lower Canada*, or as *The Civil Code of Lower Canada*, or any extract of either of the said codes, printed by the printer duly authorized by Her Majesty, is deemed authentic.]—Any abbreviated form of reference to any act or part of an act is sufficient, if it is intelligible.

**27.** Exceptional provisions concerning certain matters and proceedings in the districts of Saguenay, Chicoutimi, Gaspé and the Magdalen Islands are contained in chapters 77, 78, 79, 80, 83, and 85 of the Consolidated Statutes for Lower Canada.—C. S. L. C. c. 77, s. 50; c. 78, s. 17, § 4; c. 79; c. 80; c. 83, ss. 15, 79, 188; c. 85, s. 28.

## SECOND PART.

### PROCEDURE BEFORE THE DIFFERENT COURTS.

#### BOOK FIRST.

##### SUPERIOR COURT.

###### PRELIMINARY PROVISIONS.

**28.** The superior court has original jurisdiction in all suits or actions which are not exclusively within the jurisdiction of the circuit court or of the admiralty.—C. S. L. C., c. 78, ss. 2, 3.

**29.** The judges of the superior court, or any ten or more of them, may, from time to time, make any rules of practice that may be necessary for regulating proceedings, in or out of term, in causes and matters brought before them whether in the superior or in the circuit court, and all other matters of procedure not regulated by this code; provided

such rules be not inconsistent with the provisions of this code.—C. S. L. C., c. 83, ss. 38, 108 § 13, s. 148.—All rules of practice thus made by such judges and signed by them, are, without any other formality and immediately upon receipt thereof, or of a copy thereof certified by the prothonotary of the superior court having custody of the original thereof, entered in the registers of each of the said courts respectively, at each place where it is held, and have then full force and effect in the district or circuit where it has been so registered.—*Ibid.*, c. 83, s. 148, § 2.—The judges of the superior court, or any ten or more



of them, may also make any tariffs of fees for the counsel, advocates, and attorneys, examiners and other officers appointed by the superior court, whose salaries are not, by law, fixed by the governor in council; and all such tariffs must be promulgated in the manner prescribed by the rules of practice. The governor in council may make, modify, revoke or amend the tariffs of fees payable to prothonotaries, clerks, sheriffs, coroners, and criers, in accordance with the provisions of chapter 93 of the consolidated statutes for Lower Canada. And any officer or other person receiving any other or greater fees or emoluments than are specified in the tariff for the circuit court, for the discharge of the duties and services therein mentioned, is liable to a penalty of eighty dollars for each offence, as mentioned in chapter 83 of the consolidated statutes for Lower Canada.

30. Every judge, prothonotary and clerk, and every commissioner authorized for that purpose, as hereinafter mentioned, has a right to administer and receive the oath, whenever it is required by law, by rules of practice, or by order of a court or judge, or the affirmation in the cases which admit of it unless such right be restricted by some provision of law.—Any judge of the superior court may, in the district in which he discharges his functions, empower, by one or more commissions, under the seal of the court, as many per-

sons as may be necessary in any district, as commissioners to receive affidavits therein, to be used in the superior court or the circuit court.—C.S.L.C., c. 82, s. 10.—The chief-justice of the superior court, and any other judge of the same court, and, in the case of the death of the chief justice or of his absence from the province, any two judges of the said court may, by one or more commissions under the seal of the court, appoint as many persons as they think necessary, within the limits of Upper Canada, as commissioners to receive affidavits therein, to be used in any court of record in Lower Canada.—C. S. C., c. 79, s. 2.—The governor may likewise, from time to time appoint fit persons, residing in any part of Great Britain and Ireland, or in any of the English colonies, as commissioners for receiving such affidavits.—C. S. L. C., c. 82, s. 12.—Every deposition or affidavit thus received, has the same force and effect, and is entitled to the same credence as if it had been received in open Court.—C. S. L. C., c. 82, s. 10, § 2.—The provisions of the 26 Vic., chap. 41, give like force and effect to all affidavits received before a commissioner authorized by the lord chancellor to administer affidavits in chancery in England; or before a notary public, under his hand and official seal; or before the mayor or chief magistrate of any city, borough, or incorporated town in Great Britain or Ireland, in any of Her Majesty's colonies, or in

any foreign country, under the common seal of such city, borough, or incorporated town; or before any judge of a superior court, in any of Her Majesty's colonies or dependencies; or before any consul, vice-consul, temporary consul, pro-consul, or consular agent of Her Majesty, exercising his functions in a foreign country. The words "commissioner of the superior court," whenever they are used in this code, mean a commissioner appointed under any of the provisions of this article.

31. If a party establishes, under oath, that he does not possess sufficient means to make the necessary disbursements, the court or a judge, on being satisfied, by affidavit, that such party has a good cause of action, or a good defence, may grant him leave to plead *in forma pauperis*, and may order all officers of justice to afford him their services without any remuneration; but such party, if he fails in the suit, is not exempt from condemnation to pay costs to the other party.\*—C. S. L. C., c. 82, s. 24;—1 Tidd's Prac., p. 97;—Edit. de 1837, p. 63-4;—Laya, 393.

32. Such leave may, however, be revoked by the court or judge, upon proof that the party was or has since become able to make the necessary disbursements.—*Ibid.*, § 2.

\* But the court or judge cannot grant leave to any party to institute *in forma pauperis* any suit to recover a penalty.—36 Vic., c. 20, s. 1, Q.

33. [If a party, proceeding *in forma pauperis*, obtains judgment in his favor, the other party may be condemned to pay costs, including those of the officers of justice, who are then entitled to an execution to obtain payment thereof from such party, by way of distraction.—No more than one execution can, however, be issued for all the taxed costs remaining unpaid; it is issued at the instance of the prothonotary, or of any party interested, and the moneys are returned into the office of the prothonotary, who pays the same, free of charge, to the parties entitled thereto.]—Tidd's Prac., p. 98-9

34. In matters purely personal, other than those mentioned in articles 25, 36, 38, 40, and 42, the defendant may be summoned either—1, before the court of his domicile; 2, before the court of the place where the demand is served upon him personally; or 3, before the court of the place where the right of action originated.—C. S. L. C., c. 82, s. 26.

35. In every suit for separation from bed and board, or for separation of property only, the defendant must be summoned before the court of the domicile of the husband.—C. C. 192.

36. Every suit in damages against a public officer, by reason of any act done by him in the exercise of his functions, must be brought before the court of the place where such act was committed.—C. S. L. C., c. 101, s. 3.

37. In every real or mixed action the defendant may be

summoned before the court of his domicile or before that of the place where the object in dispute is situated.—C. S. L. C., c. 82, ss. 27, 28, 30.

**38.** In matters purely personal, if there are several defendants in the same suit residing in different jurisdictions, they may all be brought before the court of the jurisdiction where one of them has been summoned in conformity with article 34. In real actions, they should all be summoned before the court of the place where the object in dispute is situated. In mixed actions, before the court of the place where the object in dispute is situated, or before the court of the domicile of one of the defendants.—*Ibid.*

**39.** In matters of succession, the parties are summoned before the court of the place where the succession devolves, if it opens in Lower Canada, otherwise, before that of the place where the property is situated, or that of the domicile of the defendant or of some

one of the defendants.—*Ibid.*

**40.** In actions in warranty and actions in continuance of suit, the defendants are summoned to the place where the principal action was brought, wheresoever their domicile may be.—*Ibid.*, c. 82, ss. 31, 33.—C. P. C., 59.

**41.** When a real action has for its object an immoveable or immoveables, situated partly in one district or circuit, and partly in another, the suit may be brought in either.—*Ibid.*, c. 82, s. 29.

**42.** If the sole judge administering justice in any district is liable to be recused or must be a party to the suit, the action may be brought in one of the adjoining districts, the grounds of recusation or disability being alleged in the demand; and if these grounds are insufficient or not proved, the court may order the case to be sent back to the court before which it would have been brought in the ordinary course.—C. S. L. C., c. 78, s. 20; c. 79., s. 19.

## TITLE FIRST.

### OF THE SUIT.

#### CHAPTER FIRST.

##### OF SUMMONS.

**43.** Every action before the superior court is instituted by means of a writ of summons, in the name of the sovereign; saving the exceptions contained in this code, and other cases *provided for by special laws.*—

C. S. L. C., c. 83, ss. 1, 43.—C. P. L., 179.

**44.** Writs of summons are issued by the prothonotary, upon the written requisition of the plaintiff.—*Ibid.*

**45.** They may be drawn up either in the French or in the English language.—C. S. L. C., c. 83, s. 2, 169.

46. They are attested and signed by the prothonotary.—*Ibid.*, s. 1, 169.

47. The absence of the seal of the court does not invalidate the writ.—*Ibid.*, ss, 1, 2.

48. Saving the particular exceptions hereinafter mentioned, writs of summons are directed to any bailiff of the superior court, commanding him to summon the defendant to appear before the court on the day and at the place therein mentioned. If there are several defendants residing in different districts, several writs must issue, addressed, as the case may require, either to the sheriff or to a bailiff of each of such districts.—*Ibid.*, ss. 3, 4, 174 § 4.

*Notwithstanding the provisions of articles 48, 84, 248, 461, 555, 559, 809, 836, 857, 899, 1081 and 1082 of the code of civil procedure of Lower Canada, all writs of summons, of attachment for rent, of attachment in revendication, of attachment before or after judgment, seizure in execution, capias, subpoena or order, issuing either from the superior or circuit court, may be addressed either to the sheriff or to any bailiff of the district in which such writ issues, and may be by them served or executed in such district or in any other district, or to the sheriff or to any bailiff of such other district in which such writ is to be served or executed.—33 Vic., c. 17, s. 1, Q.*

49. The writ must state the names, the occupation or quality, and the domicile of the plaintiff, and the names and

actual residence of the defendant.—In actions upon bills of exchange or promissory notes, [or any other private writings, whether negotiable or not,] it is sufficient to give the initials of the christian or first names of the defendant, such as they are written upon such bills, notes or instrument.—When a corporate body is a party to the suit, it is sufficient to insert its corporate name and to indicate its principal place of business.—Ord. 1667, tit. ii., arts. 2, 6.—25 Geo. III., c. 2, s. 1.—12 Vic., c. 38, s. 50.—C. S. L. C., c. 64, s. 29.—C. S. C., c. 63, s. 1; c. 65, s. 4.—C. P. Genève, 34.—C. C. Corp. 9.—C. P. C. 61.

50. The causes of action must be stated in the writ, or in a declaration annexed to it.—C. S. L. C. c. 83, ss. 44, 170.—Ord. 1667, tit. ii., art. 1.—C. P. C. 61.

51. The formalities mentioned in articles 46, 48, 49, and 50 are required on pain of nullity.—Ord. 1667, tit. ii., arts. 1, 2.

52. If the object of the demand is a thing certain, it should be described in such a manner as clearly to establish its identity. If it relates to a corporeal immoveable, the nature of such immoveable, the city, town, village, parish, or township, street, range or concession wherein it is situated, and also the lands contiguous to it, should be mentioned.—If it is a body of land, known under a particular name, it is sufficient to give its name and its situation.—If the immove-

able forms part of a township, parish, city, town, or village, the lots in which are numbered, it is sufficient to state its number.—If the demand relates to rents constituted for the redemption of seigniorial rights, or to rights relating to any seigniority, they must be described according to the provisions of the act 27 and 28 Vic., c. 39.—Ord. 1667, tit. ix., arts. 3, 4.—C. S. L. C., c. 41, ss. 26, 28, § 2; c. 37, s. 74.—C. P. C. 64.—C. P. L. 173.

**53.** The writ of summons, and the declaration served upon the defendant, and filed in the office of the prothonotary, may be amended or altered with the leave of the court. The amendment cannot be allowed if it changes the nature of the demand.—C. S. L. C., c. 83, s. 67.—Powell, p. 188.

**54.** No party can be summoned on a Sunday or a holiday without the express leave of a judge.—Pothier, Proc. 7.—1. Pigeau, 134, notes a. b.—C. P. C. 63, 1037.—C. P. L. 207.

**55.** No summons can be served before [seven o'clock in the morning, or after seven o'clock in the afternoon.]—This provision, however, does not apply to cases of *capias ad respondendum*.—Robinson *vs.* McCormick, L. C. Reports, vol. 1, p. 27;—Poth. Proc. 7;—1. Pigeau, 134;—Laws of the XII Tables, tit. 7, L. 8;—1 Revue de Leg. L. C., p. 44;—13 L. C. Reports, 302;—C. P. C. 1037.

**56.** Service is effected by leaving with the defendant a copy of the writ of summons, and of the declaration, if there

is one.—The copy must be certified either by the prothonotary or by the attorney for the plaintiff, or by the sheriff, when the service is to be made by him.—C. S. L. C., c. 83, s. 3, § 3; s. 6, § 3; s. 44;—C. P. C. 65.

**57.** Service must be made either upon the defendant in person, or at his domicile, or at the place of his ordinary residence, speaking to a reasonable person belonging to the family.—In the absence of a regular domicile, service may be made upon the defendant at his office or place of business, if he has one.—C. S. L. C., c. 83, ss. 44, 173;—C. P. C. 68;—1 Chitty's Arch. Practice, 184;—C. P. L. 190.

**58.** [In all cases in which the defendant resides in the same domicile with the plaintiff he must be served personally, unless the court grants leave to serve him otherwise.]

**59.** If there are several defendants, they are served in the manner above mentioned, separately and distinctly, and a copy of the summons is left with each of them, except in the cases hereinafter provided, —Pothier, Proc., p. 7.

**60.** Service upon a general partnership may be made at its place of business, if it has one, and if it has not, upon one of the partners.—Anc. Deniz. vo. Ajournement, no. 27; vo. Société, no. 27;—Encyclop. de Droit, vo. Ajournement p. 257;—Nouv. Deniz. vo. Assignation, § 7, no. 13;—12 Vic., c. 45, s. 4;—C. P. C. 69, 68;—Berthelet *vs.* Galarneau, Law Reporter, p. 109;—C. S. C., c. 60, s. 12;—

C. S. L. C., c. 65, s. 4, § 3;—4 Pardessus, no. 976;—Nouv. Pigeau, pp. 194, 12;—13 L. C. Rep. 415;—Code, Société, art. 6 d.;—Hineky *vs.* Smith *et al*; 22 April, 1848, at Montreal;—C. P. L., 198,

**61.** Service upon a joint-stock company may be made at its office, speaking to a person employed in such office, or elsewhere upon its president, secretary or agent.—23 Vic. c. 31, s. 55;—C. P. C. 69, § 6.

**62.** If the partnership has no known office or place of business, nor any known president or secretary or agent, upon a return to that effect, the court or judge may order it to be summoned by a notice to be inserted during one month in at least one newspaper, and such notice is held to be a sufficient service.—*Ibid.*

**63.** Service upon a body corporate is made in the manner provided by its charter, and in the absence of such provision, in the manner prescribed in the two preceding articles.—Valin *vs.* Corporation de Terrebonne, 9 L. C. Report, 436.

**64.** Foreign companies or corporations, and all executors of wills, administrators, or representatives of the succession of persons having had property in Lower Canada, may, if they have an office or an agent in Lower Canada, or carry on business therein, be summoned there, in the manner provided in article 61, and, if they have no such office, in the manner prescribed in article 62.—C. S. L. C. c. 91, s. 3;—5 L. C. Reports, 403.—“*Foreign*

*railway companies who control either as owners or lessees, any line of railway extending to or passing through the province of Quebec, and who have no office, president, secretary or agent therein, are sufficiently summoned by service made upon any of their station agents or depot masters, in charge of such stations or depots, belonging to or under the control of the said companies, as are situated within this Province.*”—35 Vic. (1871), c. 6, s. 1, Q.

**65.** [Church *fabriques* and vestries are served by leaving copies of the summons separately with the *curé* or rector, or person performing his functions in the parish, and with the then acting church-warden].

**66.** [Service upon masters or captains of ships or other mariners, who have no domicile in Lower Canada, may be made on board the ship they belong to, speaking to a person in the ship's employ.]—1 Carré et Ch. p. 404, note 2.—1 Favard de Langlade, p. 144, no. 8.—7 Dalloz, p. 779, no. 9.—C. P. C. 68, 419.—C. P. L. 199.

**67.** A wife separated from bed and board must be served separately from her husband.—A wife not separated from bed and board is sufficiently summoned by service made upon her husband.—1 Rogron, pp. 313-4.—Code, Domicile, arts. 5, 8.—1 Carré et Ch. p. 400.—Trust and Loan Co. *vs.* McKay, 9 L. C. Rep. p. 465.—C. P. L. 192-3.

**68.** If the defendant has left his domicile in Lower Canada or has never had such

*domicile*, but† has property therein, the court or judge, or the prothonotary, upon a return stating that he cannot be found in the district, may order him to appear within two months from the last publication of such order.—The order must be published in the French and English languages, and be twice inserted in a newspaper published in each language respectively in the district where the court is held; and in default of either of such newspapers in such district, then it is inserted in a similar newspaper of the nearest locality; and such newspapers are indicated in the order by the court, or judge, or the prothonotary.—C. P. C. 69, 73.—The Sun Insurance Co. of N. Y. *vs.* James, Q. B., Montreal, 1868-9.—McCuaig *vs.* Creighton, Q. B., Montreal, 1870-1.

69. Nevertheless, and without prejudice to the mode of summons mentioned in the preceding article, when a defendant, having property in the province of Quebec,\* has no longer or has never had any domicile therein, or when the cause of action arose in the province of Quebec\* and the defendant resides in the Dominion of Canada,\* the judge or the prothonotary, upon proof of the fact, by affidavit or otherwise, may grant leave to serve the writ of summons at the domicile of the defendant\* and such leave is endorsed in writing by him,\* upon the writ,

which may then be served by any bailiff of a court of superior jurisdiction in the place in which the service is to be made\* or any literate person, either of whom makes an affidavit of service, sworn to before any justice of the peace having jurisdiction in the place where\* the service was made, or before a commissioner of the superior court for the province of Quebec\* †—22 Vic., c. 5, s. 58.—C. S. L. C., c. 83, s. 63, §§ 1, 2.—38 Vic. c. 9, Q.

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\* 38 Vic., c. 9, Q.

† *Affidavit of service under article sixty-nine of the Code of Civil Procedure, to be endorsed on writ of summons:*

A—B—, of—, being duly sworn, doth depose and say (that he is a bailiff entitled to serve process of the county court of the county of—, in Upper Canada), and that he served the within writ of summons on C. D., the defendant (or as the case may be) therein named, on the— day of—, 18—, at—o'clock, in the—at—, — in the said county, by delivering to him personally a true copy of the said writ; or (as the case may be) by leaving a true copy thereof for the said C. D. with a grown up person of his family, at his domicile in the said county; and deponent hath signed. A. B.

Sworn before me, at— }  
this—day of—, 18— }

Sign're of Com'r or Justice of Peace

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† 35 Vic., c. 6, s. 2, Q.

\* 38 Vic., c. 9, Q.

**70.** Persons imprisoned may be summoned by personal service between the wickets.—1 Carré et Chauveau, p. 414, citing Ricard.

**71.** A summons cannot, on pain of nullity, be served in church, nor in court, nor upon a member of the legislature upon the floor of the House.—Rodier upon art. 3 of tit. ii. of the Ord. of 1667.—Papon, liv. 18, tit. 5, 20, 27.—1 Pigeau, p. 136.—1 Carré et Chauveau, p. 395.—but see 1 Chitty's Archbold's Practice, 180.

**72.** A summons may be served at any domicile elected by the party for such purpose.—2 Rev. Lég. B. C. 304.

**73.** Persons may be summoned to appear upon any day in the year other than a Sunday or holiday.—C. S. L. C., c. 83, ss. 7 and 174.

**74.** Bailiffs cannot make services in cases in which they are interested, nor in those which concern their relations by birth or affinity, to the degree of cousin-german inclusively.—Guyot, Rep. *vo.* Huisier, p. 588.—1 Pigeau, 109.—Anc. Deniz. *vo.* Huissier, 69.—C. S. L. C., c. 81, s. 3.—C. P. C. 66.

**75.** In ordinary cases the

N.B.—Omit the words "that he is a bailiff entitled to serve process of the county court of the county of—, in Upper Canada,"—when service has been made by a person who is not a bailiff, or being a bailiff, is not entitled to serve process of county court in such county; and otherwise alter according to circumstances.

delay upon summons is ten intermediate days between the day of service and the day fixed for the appearance, when the distance from the domicile of the defendant to the place where the court is held does not exceed five leagues.—In demands by reason of usurpation of office, and in those for writs of *mandamus*, of prohibition, and of *scire facias*, the delay is three days.—In suits between lessors and lessees the delay upon summons is one day only. When the distance exceeds five leagues the delay is increased one day for each additional five leagues.—C. S. L. C., c. 83, s. 8;—c. 88, s. 1, § 2; c. 40, s. 10.—C. P. C. 72.

**76.** Writs of summons must be returned into the office of the clerk of the court on or before the day fixed.—C. S. L. C., c. 83, s. 9.

**77.** The writ must be accompanied with a return or certificate of service.—Ord. 1667, tit. 2, arts. 1, 2.

**78.** Such return of service, if made by a bailiff, must state:

1. His names, his residence, and the district for which he is appointed;

2. The day and hour of the service;

3. The place where, and the person with whom a copy of the writ was left;

4. The distance from the bailiff's residence to the place of service;

5. The distance from the court-house to the defendant's domicile, or the place of service;

6. The amount of the costs of service.



If the return is made by the sheriff, it must contain the same statement, with the exception of what is mentioned in the first paragraph.—Ord. 1667. tit. 2, arts. 2, 3, 5.—C. P. C. 61, 67.—C. P. L. 201-2.

**79.** The truth of the return can only be contested by impropriation, [unless the court orders otherwise.]—9 L. C. Rep., 465.

**80.** The court may grant leave to amend any error in the return.—7 L. C. J., 46.

## CHAPTER SECOND.

### OF THE RETURN.

**81.** Every writ of summons and every writ of *capias* or attachment, must be filed in the office of the clerk, on or before the day on which the defendant is therein summoned to appear, or upon the next following judicial day in the case of article 3.—C. S. L. C., c. 83, ss. 5, 9.

**82.** [If the writ is not returned, as hereinabove provided, the defendant may obtain the benefit of a default against the plaintiff, and be discharged from the suit, with costs, upon filing the copy of the writ served upon him.]—C. S. L. C., c. 83, ss. 66, 189, § 4.—C. P. C., 154.

### SECTION I.

#### *Of Appearance.*

**83.** The defendant, when duly summoned, must appear, either in person or by attorney, and must file a written appearance in the office of the clerk of the court on the day fixed,

or on the next following judicial day.—C. S. L. C., c. 83, s. 9.—22 Vic. c. 5, s. 31.—C. P. C. 149.

### SECTION II.

#### *Of Election of Domicile.*

**84.** Every party appearing in person is held, by reason of such appearance, to have elected domicile in the office of the prothonotary in which his appearance is filed.—Whenever one of the parties has, since the commencement of the suit, left Lower Canada, or has no domicile therein, all orders, rules, notices or other proceedings, may be served upon him at the prothonotary's office, as being his legal domicile, provided the bailiff alleges in his return that he has made fruitless endeavours to find him, and that, to the best of his belief, he is not within the limits of Lower Canada.—C. S. L. C., c. 83, s. 64.

*The sheriff may also make such return.*—33 Vic., c. 17, s. 1, Q.

**85.** Advocates and attorneys are bound to elect domicile within a distance of one mile from the building in which the court is held, and to have the same, as well as any subsequent change thereof, registered in the prothonotary's office, in the register kept for that purpose.—In default of making such election of domicile, or of registering the same or any change thereof, such attorneys are held to have elected domicile at the

prothonotary's office, where all services upon them may be validly made.—C. S. L. C., c. 83 ss. 11, 64;—Rules of Practice, 2, 87.

### SECTION III.

#### *Of Non-Appearance.*

**86.** If the defendant does not appear within the delays prescribed, the prothonotary, on the next following juridical day, must enter a default against him, and the plaintiff, upon obtaining a certificate of such entry, may proceed to judgment *ex parte*.—C. S. L. C., c. 83, ss. 9, 189, 196;—22 Vict., c. 5, s. 31;—C. P. C. 149.

**87.** Notwithstanding the entry of such default, the defendant may, at any time before judgment, upon special application and sufficient cause shown, be relieved from it, upon such conditions as the court may think proper to impose.—C. S. L. C., c. 83, s. 10.

**88.** This application must be served upon the plaintiff at least one clear day before it is presented.—*Ibid.*

### SECTION IV.

#### *Of Judgment by Default for Non-Appearance.*

**89.** If, in any action founded upon a bill of exchange, promissory note, *cédule*, cheque act or private-writing, the defendant fail to appear or to plead, judgment may be rendered out of term upon the written application of the

plaintiff, without its being necessary to prove the signatures to such documents, [or to make any other proof.]—C. S. L. C., c. 83, ss. 86, 113.

**90.** Judgment may be rendered in the same manner when the action is founded upon an authentic document.—*Ibid.*, s. 113.

**91.** In actions founded upon verbal agreements to pay specific sums of money, or upon detailed accounts, or for goods sold and delivered, or for money lent, judgment may likewise be rendered forthwith upon production, together with the inscription for judgment, of an affidavit of the plaintiff, or one of the plaintiffs, or of any other credible person, whether competent or not to be a witness in the case, duly made before a judge, or the prothonotary, or a commissioner of the superior court, and establishing that, to the knowledge of the deponent, the amount claimed is due by the defendant to the plaintiff.\*—*Ibid.*

\* No. 28.—*Affidavit of the plaintiff (or one of the plaintiffs.)*

Lower Canada,  
District (or Circuit) of — }  
In the superior (or circuit) court.

A. B., Plaintiff, *vs.* C. D., defendant.

A. B., of —, the plaintiff, (or one of the plaintiffs) in this cause, being duly sworn, doth depose and say, that the sum of....., being the amount demanded of the defendant in

92. In every such case, the prothonotary in vacation, upon the case being inscribed for judgment, draws up a judgment, in the name of the court, conformably to the demand and to the amount which appears to be due; and such judgment is held to be the judgment of the court, and is recorded accordingly.

this cause, is justly due by him to the plaintiff (or plaintiffs) therein, for the causes in his (or their) demand mentioned; and the said deponent hath signed, (or hath declared himself unable to sign, being thereunto duly required.

Signature, A. B.

Sworn before me, at....., this ...day of....., 18....

J. S. P.

Signature of the judge, prothonotary, clerk or commissioner.

.....

No. 29....*Affidavit of a person other than a plaintiff.*

Lower Canada, }  
District (or Circuit) of ... }  
In the superior (or circuit) court.

E. F., of....., being duly sworn, doth depose and say, that to his personal knowledge, the sum of....., being the whole (or part, as the case may be) of the amount demanded of the defendant in this cause is justly due by him to the plaintiff (or plaintiffs) for the causes in his (or their) demand mentioned; and the said deponent *hath signed, (or hath declared*

No such judgment can, however, be rendered or recorded against any absentee defendant, who has been summoned as such.—*Ibid.*, ss. 113, 127.

93. The plaintiff may, at any time before executing such judgment, renounce the same, and, upon filing with the prothonotary his renunciation in writing, he may proceed in the ordinary form, in the same manner as if it had not been rendered; he must, however, bear the costs of such judgment. *Ibid.*, s. 126.

#### SECTION V.

##### *Of Confession of Judgment.*

94. The defendant may, at any stage of the proceedings, file, or cause to be taken down in writing at the prothonotary's office, a confession of judgment for the whole or any part of the demand.—The confession must be signed by the defendant, or be made by his special attorney, whose power of attorney, in authentic form, must be filed with such confession....25 Vic., c. 10, s. 10.

95. [If the person who appears as defendant, in order to confess judgment, is unknown to the prothonotary, the latter must require him to produce himself unable to sign, being thereunto duly required.)

Signature, A. B.

Sworn before me, at..... this ...day of....., 18....

J. S. P.

Signature of the judge, prothonotary, clerk or commissioner.

the copy of the summons, or to procure the counter-signature of an attorney-at-law.]

96. If the plaintiff accepts such confession, he may inscribe the case forthwith for judgment, and the prothonotary draws up, in conformity with such confession, a judgment, which is held to be the judgment of the court, and is recorded and executed accordingly. The judgment thus drawn up need not mention the presence of a judge, but it must contain a recital of the confession as it was given, and of the inscription by the plaintiff, and lastly the condemnation, in the name of the court, against the defendant.—*Ibid.*

97. If the confession of judgment is not accepted, the plaintiff must give the defendant notice to that effect, and, after such notice, the case is proceeded with in the ordinary course; and, if the plaintiff does not obtain more from the court than he would have had upon the confession, he is not entitled to more costs than if the confession had been accepted; saving the power of the court to grant the defendant whatever costs of contestation it may think proper.—C. S. L. C., c. 83, s. 70.

98. [If there are several defendants in the same suit, some only of whom confess judgment, the plaintiff may proceed, upon such confession, to recover against those who have acknowledged their indebtedness, saving his right to continue the suit against the others.]

## SECTION VI.

### *Of the Filing of Exhibits.*

99. The plaintiff must, at the time that he returns the writ, file in the prothonotary's office the written proofs which he has alleged in support of his demand, together with a list or inventory of such exhibits.—Ord. 1667, tit. xi., art. 6.

100. If the exhibits are private writings, or notarial originals, the party may retain them until the articulation of facts, provided he files copies thereof, certified by him or by his attorney.—*Bell vs. Knowlton*, Montreal, March, 1855;—24 Rule of Practice.

101. Exhibits filed cannot be taken out of the office, unless the opposite party consents and a receipt is given.—C. P. C., 189.

102. [Any person in possession of a document filed and forming part of a record, or having taken or received it, may, upon motion, be coerced by imprisonment, to return the same, without prejudice to his liability for damages.]—C. P. C. 107.

103. Until the exhibits have been filed in the manner hereinabove prescribed, the plaintiff cannot proceed with his demand.—Ord. 1667, tit. xi., art. 33.—C. P. L., 321.

104. Every exhibit filed in a cause becomes common to all the parties to the suit, and they may obtain copies thereof from the prothonotary so long as it remains in his hands.—*Serpillon*, sur tit. xi., art. 16, p. 168; sur. tit. xvi., art. 9, p. 188.—*Poth. Proc. civ.* 44.

**105.** The prothonotary cannot receive any exhibit in blank, nor any list of exhibits in which the designation of any exhibit is not filled up.—Ord. 1667, tit. xi., art. 32.

**106.** If the exhibits in support of the demand have not been filed on the return day, they cannot be filed afterwards without giving notice to the opposite party; saving the provisions of article 100.

### CHAPTER THIRD.

#### OF CONTESTATION.

#### SECTION I.

##### *General Provisions.*

**107.** All declinatory and dilatory exceptions, and exceptions to the form, which the defendant intends to plead, must be filed within four days from the return of the writ, except in the case mentioned in article 121.—C. S. L. C., c. 83, s. 12.

**108.** The plaintiff is bound to answer any such exception within eight days after it is filed; excepting where he is himself obliged to call in warrantors; the delay then begins only from the expiration of the delays to which such warrantors are entitled to answer the demand brought against them.—*Ibid.*

**109.** The defendant, when he is entitled to reply, must file his replication within eight days from the filing of the plaintiff's answer.—*Ibid.*

**110.** A like delay of eight days is allowed for the filing of any other pleading that may be necessary, or is permitted by the court, in order to complete the issues.—*Ibid.*

**111.** The party failing to file any such preliminary exception, answer, or replication, or other pleading, within the delays prescribed, is, by law, foreclosed from doing so, unless the court, upon cause shown, has extended the delay, or has otherwise ordered.—23 Vic., c. 27, s. 37.—C. S. L. C., c. 83, ss. 14, 75.

**112.** [No plea containing a preliminary exception can be filed unless it is accompanied with a deposit of such sum of money as is fixed by the rules of practice of the court.]\*

#### SECTION II.

##### *Of Declinatory Exceptions.*

**113.** When a declinatory exception, filed by the defendant is maintained, the parties must be dismissed, saving their recourse before a competent court.—C. P. C. 168.—C. P. L. 321.

**114.** The parties must also be dismissed by the court, even though no such exception has been pleaded, if the action is manifestly beyond the jurisdiction of the court.—C. P. C. 170.

**115.** The court, in declaring itself incompetent, may award costs, according to circumstances.—1 Pigeau, 155.

\* *Vide* 32 Rule of Practice S. C., which fixes it at £2. 1s. 8d.

## SECTION III.

*Of Exceptions to the Form.*

**116.** The following grounds must be pleaded by exception to the form :

1. Informalities in the writ or service ;

2. Informalities in the declaration, when it contravenes the provisions contained in articles 14, 19, 50, 52 and 56.—1 Pigeau, 160 *et seq.* \*

**117.** The plaintiff, upon an exception to the form as well as at any other time before judgment, may, by leave of the court, amend either the writ or the declaration, on payment of such costs as the court determines.—C. S. L. C., c. 83, s. 67.

**118.** If the copy of the writ or of the declaration is incorrect, or different from the original, the plaintiff may, upon leave of the court and on payment of costs, furnish the defendant with a correct copy.—2 L. C. Reports, 110.

**119.** Nullities in the writ or service, and informalities in the declaration, are waived by the appearance of the defendant and his failure to take advantage of them within the delays prescribed.—C. P. 175.

\* The codifiers here suggested this additional article in amendment : " An exception to the form does not lie if the plaintiff has omitted to allege in his declaration the performance of some formality required as a simple accessory of the right he claims. The inobservance of such formalities can only be pleaded by *peremptory exception*."

## SECTION IV.

*Of Dilatory Exceptions and specially of Actions in Warranty.*

**120.** The defendant may stay the suit by dilatory exception :

1. If the delays to which he is entitled for the purpose of making an inventory and deliberating, whether as heir, or legatee, or in the case of community of property, have not expired ;

2. If he has a right to demand security from the plaintiff, or the execution of some precedent obligation ;

3. When the plaintiff contravenes the rule that the parties should remain in their respective positions until these are changed by judicial authority ;

4. When the defendant has a right to exercise a recourse in warranty against a third party ;

5. When he has a right to demand the discussion of the principal or original debtor ;

6. When the plaintiff has joined in his action several claims which are incompatible, or susceptible of different modes of trial ; and in such case the defendant cannot be bound to defend the action until the plaintiff has declared his option ;—1 Pigeau 166, 170, 173, 179, 188, 197, 200.—Pothier, Proc. Civ., 28, 29.—Ord. 1667 tit. viii., arts. 1, 2 ; tit. ix., art. 2.—C. P. C. 174.—C. P. L. 152, 322.

7. If the plaintiff does not reside in the province, and a power of attorney from him is

not produced;—*Gray vs. McQueen*, Montreal, 20 January, 1855.

8. If, in the case of an indivisible right or claim, all the parties interested, and whose presence is necessary, are not made parties to the suit.—*Imp. Stat.*, 15 and 16 Vic., c. 76, s. 34.

121. If the dilatory exception is founded upon the legal delay for making an inventory and deliberating, the delays for pleading to the action, and even for setting up other preliminary pleas, do not begin to run against the defendant until after the time allowed him to make such inventory and to deliberate.—*Ord.* 1667, tit. viii. art. 3.

122. If the defendant has warrantors to call in, he may, by means of a dilatory exception, obtain that his delay to plead to the action be not computed until the warrantors have been called in and held to plead to the merits.

123. [The delay allowed to call in warrantors is eight days after service of the principal demand, exclusive of whatever time may be required to summon the warrantors, pursuant to the provisions of article 75.]—*Ord.* 1667, tit. viii., art. 2.

124. The demand in warranty must be special and contain a summary statement of the grounds upon which it is made, with a copy of the principal demand and of the pleadings which require the calling in of the warrantors.—*Ord.* 1667, tit. viii., art. 4.

125. In cases of simple or personal warranty, the war-

rantor cannot take up the defence of the defendant, but can merely intervene and contest the principal demand, if he thinks proper.—*Ibid.*, art. 12.

126. In cases of real warranty, the purchaser who is disturbed or evicted is not bound to call in first his immediate warrantor, but he may summon in warranty any more remote warrantor who may eventually be bound to intervene in the suit.—*C. S. L. C.*, c. 82, s. 32.

127. In cases of real warranty, the warrantor may take up the defence of the warrantee, who is relieved from the contestation, if he requires it.—Nevertheless, although relieved from the contestation, he may remain in the suit, and act in it for the protection of his rights.—*Ord.* 1667, tit. viii., arts. 9, 10.—*C. P. C.* 184.—Judgments rendered against the warrantor may be executed against the warrantee.—It is sufficient, in any case, that the judgment be served upon the warrantee, without any other demand or procedure being necessary.—*Ord.* 1667, tit. viii., art. 7.

128. Whenever, according to article 29 of the Civil Code, a person, who does not reside in Lower Canada, is bound to give security, all proceedings in the case may be stayed, upon application of the adverse party, until such security has been given.—*C. S. L. C.*, c. 83, s. 68.—*Jones vs. Kerr*, Montreal, 4th May, 1852.

129. The application for security for costs may be

made before the court or before a judge or prothonotary in vacation, and may be adjudicated upon forthwith.

If the person bound to give security fails to do so within such time as the court, judge or prothonotary may fix, the opposite party may obtain a judgment of non-suit.

Saving the foregoing provision, any person from whom security may be demanded in virtue of article 29 of the civil code, may at any time, whether the same has been demanded or not, put in such security after one clear day's notice to the opposite party.\*—33 Vic., c. 17, s. 3, Q.—*Prevost vs. Bisson*, Montreal, 26th May, 1863.

The delays for filing preliminary exceptions and pleas to the merits do not begin to run until after the date of the service upon the defendant's attorney of a notice informing him

that such security has been given.—35 Vic., c. 6, s. 6, Q.

130. The exception of discussion, whenever it lies, is subject to the general rules contained in this section, and to the special provisions contained in articles 1941, 1942, 1943, 2066 and 2067 in the Civil Code.

131. Before answering a dilatory exception, or any other preliminary plea filed, the plaintiff may if he thinks the exception is filed solely in order to retard the suit, require the defendant, in writing, to plead to the merits, and may foreclose him if such plea to the merits is not filed within eight days from the demand thereof; in which case the courts take cognizance of no other issues than those raised upon the preliminary exceptions.—C. S. L. C., c. 82, s. 73.

132. If the defendant files his pleas to the merits, proof takes place upon all the issues unless the court otherwise orders; and if he succeeds upon the preliminary exception, he may recover from the plaintiff the costs incurred upon the contestation of the merits to which he was forced under the provisions of the preceding article.—C. S. L. C., c. 83, s. 74.

133. When the defendant has pleaded a dilatory exception, which is afterwards maintained, the foreclosure from pleading to the merits, obtained against him under article 131, is without effect; but he is bound to file his pleas to the

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\*Held.--That under this article as amended, the demand for security for costs must be made within four days from the return of the writ, and that it is not sufficient merely to give notice within that time.—*Fisher vs. Moss*, Sup. Court, Montreal, 23 June, 1873.—This decision was followed by several others in the same sense.

This security may be by one surety.—*Warne vs. Shaw*, S. C., M.—Or by the deposit of a sufficient sum of money.—*Foley vs. The Canada Tanning Extract Co.*, in appeal, Q. B., Montreal, 14th December, 1875.



merits within eight days after the expiration of the delays granted upon his exception, and, in default of his so doing, the foreclosure holds good.—If, upon being required to do so by the plaintiff, the defendant has pleaded to the merits, he may, after the judgment maintaining his dilatory exception, and within eight days, amend his pleas or plead anew, without thereby incurring any costs; in default of his doing so he is presumed to abide by the pleas filed.—C. S. L. C., c. 83, s. 74, §§ 2, 3.

**134.** When the object of the dilatory exception maintained is the calling in of warrantors, the defendant in the principal suit cannot be foreclosed from pleading until after the expiration of eight days, counting from the day on which the warrantor could himself have been foreclosed from pleading to the action in warranty.—The warrantor may, within the delays granted to the warrantee, plead to the action brought against the latter, whether the warrantee has already pleaded to it or not.—C. S. L. C., c. 83, s. 74, § 3.

**135.** Grounds of preliminary exception may, in certain cases, be urged by motion, according to the practice of the courts.

#### SECTION V.

#### *Of Contestation upon the Merits.*

**136.** The defendant may plead by peremptory exception:

1. *Lis pendens*;

2. The non-completion of the time, or the non-fulfilment of the condition upon which the right of action depends;

3. The extinction, in whole or in part, of the right claimed by the plaintiff.—1 Pigeau, 198.—C. P. L. 158.

**137.** All pleas to the merits, whether by exception or otherwise, must be filed within eight days after the appearance, except in the cases otherwise provided for in the preceding section.—If they are not filed within such delay, the adverse party may demand them, and if they are not filed within the three next following juridical days, the prothonotary may grant the plaintiff a certificate of foreclosure.—C. S. L. C., c. 83, s. 12, § 2.

**138.** The same delay of eight days is allowed the plaintiff to answer the pleas, unless such answer is in the nature of a declinatory or dilatory plea, or of an exception to the form, in which case the delay is four days only, pursuant to article 107.—*Ibid.*, s. 12.

**139.** A like delay of eight days is allowed for the filing of any other pleading necessary to complete the issues.—*Ibid.*

**140.** After the expiration of these delays, the party failing to file a pleading is by law foreclosed from doing so, without the consent of the opposite party, or leave of court.—23 Vic., c. 57, s. 37.—C. S. L. C., c. 83, ss. 14, 75.

**141.** Such foreclosure does not, however, take place without an order from the court if

the opposite party has not filed with his pleading, in the manner prescribed, the exhibits or written proofs upon which it is founded; and if such exhibits and written proofs are not filed with such pleading, they cannot afterwards be filed without the consent of the opposite party or leave of court.—A judge may, in term or in vacation, extend the delay for filing such exhibits or written proofs.—C. S. L. C., c. 82, s. 180, § 3.

**142.** When an amendment of any pleading has been allowed, the delay to answer such pleading is reckoned, according to the foregoing rules, from the day on which the amendment is made and served, without any demand of answer being necessary.

**143.** When the defendant is foreclosed from pleading, the plaintiff may proceed *ex parte*, and may, if the case admit of it, proceed to judgment, according to the provisions contained in articles 89, 90, 91, 92 and 93.

**144.** [No particular form of words is required in any pleading; but every fact, the existence or truth of which is not expressly denied or declared to be unknown, is held to be admitted.]—C. S. L. C., c. 83, ss. 76, 116, § 3.—C. P. L., 327.

**145.** Every denial of a signature to a bill of exchange, promissory note, or other private writing or document upon which any claim is founded, must be accompanied with an affidavit of the party making the denial, or of some person

acting as his agent or clerk, and cognizant of the facts in such capacity, that such instrument or some material part thereof is not genuine, or that his signature or some other on the document is forged, or, in the case of a promissory note or bill of exchange, that the necessary protest, notice and service have not been regularly made, stating in what the irregularity consists; without prejudice, however, to the recourse of such party by improbation.—C. S. L. C., c. 83, s. 87, § 2.

—[In the case of promissory notes, or bills of exchange payable at a particular place, they are presumed, as against the maker or acceptor, to have been presented at that place at maturity, unless the exception founded upon such want of presentation is accompanied with an affidavit that, at the time they became due, provision had been made for their payment at the specified place.]—The denial of any document specified in article 1220 of the Civil Code, must be accompanied by the giving of security for the costs of the commission required to obtain the proof of such document. In the cases of paragraphs 5 and 6 of the same article, the denial of the original deposited must, moreover, be accompanied by an affidavit of the party making the denial, stating that he doubts and does not believe that the original in question has been signed by the person, or executed in the manner therein mentioned. The party wishing to make use of the copy filed is then bound

to prove the original, and for this purpose the person who has charge of the original is bound, upon the order of a judge, to deposit it in the court in which its genuineness is contested; and the prothonotary is bound to furnish him, at the expense of the contesting party, with a copy thereof certified by such prothonotary.—The original, the genuineness of which is thus denied, may be annexed to the commission required to obtain its proof.

**146.** When a party has pleaded incompatible or contradictory grounds [in the same plea], he may be required by the opposite party to choose between such grounds or plead anew, and in default, of such choice the incompatible grounds are held to be of no effect and are set aside.

**147.** A demurrer may be pleaded, when the facts alleged in the declaration do not give rise to the right of action which the plaintiff seeks to exercise.—1 Pigeau, 204.

#### SECTION VI.

##### *Of Issue joined.*

**148.** The issues are completed;

1. By declaration, pleas and replications, if there are no perpetual exceptions;

2. By declaration, exceptions, answers to exceptions, and replications to answers, if the answers contain facts that are not alleged in the declaration;

3. They are also held to be completed by foreclosure from filing, or by failure to file answers or replications.—Nevertheless, if the proceedings secondly enumerated are not sufficient to fully set out the grounds of the parties, the court may grant leave to file further pleadings.—C. S. L. C., c. 83, s. 72.—Kierskowski vs. Morison, 4 L. C. Rep., 419; 6 Do. 159.—25 Vic. 57, s. 37.

#### CHAPTER FOURTH.

##### OF INCIDENTS.

#### SECTION I.

##### *Of Incidental Demands.*

**149.** The plaintiff may, in the course of the suit, make an incidental demand:

1. In order to add to the principal demand something he has omitted to include in it;

2. In order to claim a right accrued since the service of the principal suit and connected with the right claimed by such suit;

3. In order to demand something which he requires for the purpose of avoiding a ground of defence set up by the defendant.—1 Pigeau, 337.—Ord. 1667, tit. xi, art. 26.

**150.** This incidental demand is made by a petition, accompanied by the documents in support thereof, and served upon the opposite party.—Ord. 1667, tit. xi., art. 26.

**151.** The defendant may set up by incidental demand any claim of his arising out of the same causes as the principal demand, and which he cannot plead by exception.

When the principal demand is for the payment of a sum of money, the defendant may also make an incidental demand upon any claim for money arising out of other causes; but such an incidental demand is distinct from and cannot retard the principal action.

The court, whenever it renders judgment upon both demands at the same time, may order compensation, if the case admits of it.—Pot., Proc. civ., 39, 40.—1 Pigeau, 337.—Paris, 106.—37 R. of P.

**152.** Incidental demands by the defendant are likewise made by petition, accompanied by the documents in support thereof, and served and filed at the same time as the pleas to the merits.—36 R. of P.

**153.** Issue is joined upon incidental demands in the same manner as upon the principal demand, and their contestation is subject to the same rules, delays and foreclosures.

## SECTION II.

### *Of Interventions.*

**154.** Every person interested in the event of a pending suit is entitled to be admitted a party thereto, in order to maintain his rights.—Pot., Proc. 40.—1 Bornier, sur Proc. Civ. 258.—27 et 28 Vic., c. 17, s. 4, § 9.—C. S. L. C., c. 83, s. 71.

**155.** An intervention is formed by a petition, containing the grounds which justify the party in intervening, with conclusions to that effect, and must be accompanied with the exhibits in support thereof.—C. S. L. C., c. 83, s. 71.—Ord. 1667, tit. xi, art. 28.—22 Imbert, 81.—C. P. C., 339.

**156.** The demand in intervention may be made in court or filed in the prothonotary's office; but it cannot stay proceedings upon the principal demand unless it is allowed by the court, or by a judge in vacation, upon application made at any time before judgment in the cause.—C. S. L. C., c. 83, s. 81.

**157.** When the intervention is allowed by the court or judge, the suit is suspended during three days; and if the intervening party fails within that period to have it served upon the parties in the case and to file a certificate of such service, it is held not to have been filed and has no effect; and the filing of the prothonotary's certificate of such default is equivalent to a judgment dismissing the intervention.—*Ibid.* § 2.

**158.** If the demand in intervention is served within the delay prescribed, the parties to the suit are bound to answer it within eight days after such service, in default of which the intervention is held thenceforward to be admitted by the parties who have not contested it. The intervening party is bound, within eight days from the admission of his intervention, to furnish any grounds he

may have to set up in the principal suit.—The subsequent proceedings are the same as in an ordinary suit.—1 Crouchet, 78.—25 Vic. c. 57, s. 36.

### SECTION III.

#### *Of Improbation.*

**159.** Besides the action of improbation which may be brought as a principal and direct action, any party in a suit may proceed by improbation against any authentic document produced by the opposite party, [and even against a return of the sheriff or of any other judicial officer.—Pot., Pro. civ., 333.—Serpillon, Code du Faux, 153.—C. P. C., 214.—Nevertheless as regards simple service of summons or of notice, the return may be contested on motion, without an improbation, unless the court otherwise orders.—If the contestation be deemed frivolous the contesting party may be condemned to pay double costs.—The court may, according to circumstances, grant leave to amend the return, by supplying any omissions or correcting any errors therein which might be grounds of improbation.]

**160.** A party may also proceed by improbation against any document filed by himself, and which he is seeking to have declared null.—Perrault & Simard, 6 Dec., des Trib B.C., p. 24.

**161.** Incidental improbation is begun by a petition, praying that the party be allowed to proceed by improbation against the document

therein designated, and that the opposite party be held to declare whether he intends to make use of such document.—The petition must, under pain of nullity, be signed by the party himself, or by his attorney under a special power filed with the petition. Imbert. p. 788.—Ord. 1670, art. 6.—Ord. 1737, tit. ii, art. 3.—Serpillon, Code du Faux, 153.—C. P. C., 215.

**162.** The petition must be served upon the opposite party before it is presented.—C. P. C., 215.

**163.** [The petition must be accompanied by a deposit in the prothonotary's office of a sum fixed by the court, to meet the costs to be incurred, in whole or in part, in the event of the improbation being dismissed.]

**164.** Improbation may be begun at any stage of the suit until the closing of the evidence and even afterwards before judgment, upon proof that the falsity was not ascertained until after evidence was closed.—All proceedings in the principal suit are suspended until the improbation is adjudicated upon.—3 L. C. Jurist, 268.

**165.** The opposite party must declare whether or not he intends to make use of the document impugned, and file in the prothonotary's office a precise declaration to that effect, previously served upon the plaintiff in improbation.—The declaration must also, on pain of nullity, be signed by the party, or by his attorney under a special power to that effect

filed with the declaration.—The declaration must be made within eight days from the filing of the petition, unless the delay is extended by the judge.—Serpillon, 169, and the authorities by him cited.—C. P. C., 216.

**166.** If the defendant in improbation fails, within the delay prescribed to make such declaration, or declares that he does not intend to make use of the document, it is rejected from the record, and if the conclusions demand it, it is also declared null.—Serpillon, 173, 179.—Cod. L. 3, *de fide instrumentorum*.—C. P. C., 217.

**167.** If the defendant in improbation declares that he intends to make use of the document, the court, or a judge in vacation, upon the demand of either of the parties, orders that such document, and the original thereof if necessary, be deposited in the prothonotary's office, at the diligence of the party who relies upon it, and that the parties in charge thereof be compelled, by all legal means, to deposit it.—Imbert, *loc. cit.*—C. P. C., 219, 220, 221.

**168.** As soon as the document impugned has been deposited in the office of the prothonotary, he proceeds to draw up a descriptive statement of its condition; this is done at the instances of either party, the other party being either present or duly notified.—The descriptive statement must mention and describe the first and last words of each page, the erasures, words writ-

ten over, interlineations, marginal notes, paraps, and signatures upon the document, and all other similar circumstances; the document is initialed, and the statement is signed by the prothonotary, and by the parties or their attorneys, or else mention is made of the reasons why the parties refused to sign upon being required to do so.—C. P. C., 225-6-7.

**169.** The parties take communication of the impugned document from the hands of the prothonotary, and without removing it.—C. P. C., 228.

**170.** Eight days after the making of the descriptive statement, the plaintiff must file his articles of improbation and serve the same on the defendant.—C. P. C., 229.

**171.** The defendant is allowed a like delay of eight days to file and serve his answers.—C. P. C., 230.

**172.** In other respects the issues are joined and tried as in ordinary suits, and are subject to the same rules and the same foreclosures.

**173.** The judgment which decides upon the improbation likewise determines to whom of right the document shall be handed over.—C. P. C., 242.

**174.** While the document impugned remains in the prothonotary's office, no copies thereof can be delivered without an order from the court, after the parties have been heard or have been notified.

175. [The provisions of this section, except those of article 163, are observed, in so far as they apply, with regard to direct actions of improbation.]

#### SECTION IV.

#### *Of Recusations.*

176. Any judge may be recused :

1. If he is related or allied to one of the parties within the degree of cousin-german inclusively ;—C. S. L. C., c. 81, s. 3.

2. If he has a suit depending upon the same question as that in issue in the case ;—Ord. 1667, tit. xxiv., art. 5.

3. If he has given advice upon the matter in dispute, or has previously taken cognizance of it as an arbitrator ; if he has acted as solicitor for either of the parties or has made known his opinion extra-judicially ;—*Ibid.*, art., 6.

4. If a suit is pending in his name before a court in which one of the parties will sit as judge ;—*Ibid.*, art. 7.

5. If he has made verbal or written threats against one of the parties since the beginning of the suit, or within six months previous to the recusation ; or if there has been mortal enmity between them without reconciliation ;—*Ibid.*, art. 8.

6. If he is the manager or patron of any order, corporation, or community, which is a party to the suit, or the tutor, honorary tutor, subrogate-tu-

tor, or curator, heir, or donee of either of the parties ;—*Ibid.*, art. 10.

7. If he has any interest in favoring either of the parties. —1 Pigeau, 365-6.

177. A judge is disqualified if he is interested in the suit, either personally, or on account of his wife, or if his wife, when separated from him as to property, is interested in the suit. —*Ibid.*

178. A judge who is liable to be recused cannot refuse to sit in the case until after he has declared the grounds of recusation that may be invoked against him and the court has ordered that he should not sit. —Ord. 1667, tit. xxiv., art. 18.

179. Any judge who is aware of a ground of recusation to which he is liable, is bound, without waiting until it is invoked, to make a written declaration of it to be filed in the record. —*Ibid.*, art. 17.

180. Any party to a suit who is aware of a ground of recusation against a judge, is bound to make it known as soon as it comes to his knowledge. —*Ibid.*, art. 19.

181. After the declaration of the judge or of one of the parties, the party desirous of recusing the judge is bound to do so within eight days from the service of such declaration ; after which he cannot do so, unless the court, for sufficient reasons, has extended the delay. —*Ibid.*, art. 20.

182. If no declaration as above mentioned has been made, the judge may be recused at any stage of the case

before judgment, upon the affidavit of the party that the grounds of recusation have only recently come to his knowledge.—*Ibid*, art. 21.

183. A recusation is proposed by means of a petition containing the grounds thereof, and it must be signed by the party himself or by his attorney under a special power.—If the party is absent from the province, his attorney *ad litem* may, without special power, sign the petition asking that the judge do abstain from sitting.—*Ibid*, art. 23.—Pot. Proc. Civ., 30.

184. When the recusation is made before the judge has made his declaration, communication of it must be given to him, and he must declare in writing whether the grounds are true or not; another judge then proceeds to determine whether the recusation is founded or not, without the recused judge having a right to be present.—*Ibid*, art. 24.

185. If the recusation is proposed against the sole judge residing in a district, it is carried to the chief-place of a neighboring district, designated by the judge who is recused, and the record is forthwith transmitted to such place by the prothonotary.—C. S. L. C. c. 79, s. 19, § 2; c. 78, s. 20, § 1.

186. If the recusing party has no written proof in support of his recusation, the judge's declaration is conclusive, and the recusing party cannot produce oral testimony, nor even obtain delay to produce

written evidence.—Ord. 1667, art. 6.

187. If the recusation is maintained, the judge cannot, for any cause or under any pretext whatever, be present in court during the hearing of the case or the rendering of the judgment.—*Ibid*, art. 15.

188. If the recusation has been carried before a court of another district and is maintained, such court remains seized of the case, and the record from that period forms part of its records.—C. S. L. C., c. 78, s. 20, § 2; c. 79, s. 19, § 3.

189. But if the recusation is dismissed, the case is sent back to the former judge, to be by him tried and determined.—*Ibid*.

190. A party who has a right to recuse a judge may renounce his right, by filing a written consent that the judge should hear and decide the case, except in the case mentioned in article 177.

191. In such case, however, as also when the party fails to recuse, the judge is not bound to sit, unless the grounds of recusation have been declared insufficient.

## SECTION V.

### *Of Disavowal.*

192. Any party may disavow his attorney *ad litem* who has exceeded his powers. He may also disavow an attorney whom he has not employed; without prejudice to his rights if he does not do so.—1 Pigeau, 349. C. P. C., 352.



**193.** A disavowal may take place during the suit or after judgment.—The latter kind is mentioned in the chapter on petitions in revocation of judgment.—*Ibid.*

**194.** A disavowal can only be made by the party himself or his attorney under a special power, and the party himself must declare that he did not authorize the act of procedure which he repudiates.—Pigeau, *Ibid.*, 350.

**195.** Disavowal is made by filing a declaration, in the office of the prothonotary of the court before which the case is pending, that the party disavows the act in question, as never having authorized the same.—Pigeau, *Ibid.*—C. P. C., 353.

**196.** The party disavowing is bound to proceed without delay to have the disavowal declared valid, and this is done by a petition served upon both the attorney or his heirs, and the opposite party.—Pigeau, 350.—Lacombe, vo. Procureur *ad lites*, no. 2.—C. P. C., 354.

**197.** After notice of the disavowal has been given, all proceedings in the principal action are stayed.—Pigeau, *Ibid.*—Guertin & O'Neil, in appeal, 8 Dec., 1865.—C. P. C., 357.

**198.** The procedure upon the disavowal is the same as in ordinary suits.

**199.** If the disavowal is maintained, the acts disavowed are annulled, and the parties are placed in the same position as they were in at the time that the acts were done.—C. P. C., 360.

## SECTION VI.

### *Of Change of Attorneys.*

**200.** If the case has not been heard upon the merits, all proceedings had or judgments rendered since the death of the attorney of one of the parties, or when such attorney can no longer act, or has withdrawn, are null, unless such party has appeared in person, or appointed another attorney, or after being called upon to do so, has made default.—Ord. 1667, tit. 26, art. 2.—C. P. C., 344.

**201.** An attorney who desires, of his own accord, to cease representing a party, must give notice to such party and to the opposite party.

**202.** If the attorney of one of the parties ceases to act as such, either in consequence of being appointed to a public office incompatible with his profession, or of suspension or death, the opposite party when represented by an attorney at law, is sufficiently informed without further notice.—C. P. C., 344.

**203.** When one of the parties ceases to be represented before the case is submitted to the consideration of the court, the opposite party must notify him to appoint another attorney.—1 Pigeau, 348.

**204.** If the defendant thereupon fails to appoint another attorney or to appear in person, the plaintiff may proceed with the suit *ex parte*.  
If the plaintiff is the party thus in default he may be non-suited.—Pot., *Proc. Civ.*, 74.

**205.** A party's revocation of the powers of his attorney will not be received unless he pays him his fees and disbursements, taxed after hearing or notice given to the party.

**206.** A party who revokes the powers of his attorney must immediately appoint another, without being notified to that effect by the opposite party, and in default of his doing so the case may be proceeded with as provided in article 204.—1 Pigeau, 349.

## CHAPTER FIFTH.

### OF ARTICULATIONS OF FACTS.

**207.** Within two days after the issues are perfected according to the prescribed rules, each party is bound to file in the prothonotary's office an articulation of the facts which he has alleged and intends to prove, if the opposite party has not admitted them in his pleadings.—C. S. L. C., c. 83, s. 87.—C. P. C., 252.

**208.** This articulation of facts must consist of separate and distinct articles upon each fact, numbered in regular order.—The articles must be in the form of interrogatories, clear and explicit, so as to call for an admission or a denial, and so that the default to answer them will establish an admission of the facts.—*Ibid.*, s. 87, § 2.—C. P. C., 252.

**209.** The articulation of facts must be served upon the opposite party *within the same*

delay of two days.—*Ibid.*, s. 87,

**210.** Any document or writing of which a party intends to avail himself at the proof, must be filed with the articulation of facts, if it has not been filed sooner.—*Ibid.*, s. 88.

**211.** Within the three days which follow the filing of any articulation of facts the opposite party is bound to answer each article separately and categorically, admitting or denying each fact articulated, or declaring it not to be within his knowledge.—After this delay of three days, the party who has failed to answer cannot be relieved from his default, except upon application made to the court or judge, and upon payment of the costs occasioned by such default and taxed by the judge.—*Ibid.*, s. 87.—29 Vict., c. 43.—C. P. C., 252.

**212.** The facts set forth in any articulation of facts are held to be proved :

1. If the opposite party does not answer it within the proper delay ;

2. If the opposite party does not deny them in an express manner, or does not declare that they are not within his knowledge.—*Ibid.*

**213.** If a document not produced with or before the articulation of facts, is afterwards filed in evidence by a party who should have filed it sooner, the costs resulting therefrom must be borne by such party, whatever may be the issue of the suit.—*Ibid.*, s. 88.

**214.** If a fact denied in an answer to an articulation of facts is afterwards proved, the

party who denied it must pay the costs incurred by such proof, whatever may be the issue of the suit.—A party who declared that a fact is not within his knowledge may also be condemned to pay the costs incurred in proving it, if the court is of opinion that he must have had knowledge of it.—*Ibid*, s. 87, § 3.

**215.** A party who has neglected to file his articulation of facts, or who has declared that he had no evidence to adduce and afterwards adduces evidence, must bear the costs occasioned thereby.—The same rule applies if he proves any fact not mentioned in his articulations, whatever may be the result of the trial.—*Ibid*, s. 90.

**216.** If the court is of opinion that the opposite party has been taken by surprise by the adduction of evidence as mentioned in the preceding article, it may postpone the proof or trial, or make such other order, or impose such terms on the party in fault as it deems just.—*Ibid*, s. 90.

**217.** The articulation of facts may, with the consent in writing of all the parties, be dispensed with; and in such case every allegation of facts by one party, which the other party in his pleadings has not denied or declared not to be within his knowledge, is held to be admitted, and the court may award the costs of such proof, according to its discretion.—*Ibid*, ss. 76, 93.

**218.** [In the case of articles 213, 214 and 215, the party who desires to be paid such costs

must make a special application for that purpose, at the time of the hearing on the merits, and accompany his application with a statement of the facts he has been obliged to prove, and of his costs of proof.]

**219.** [In rendering judgment upon the merits, the court also adjudicates upon the application for such costs.]—*Ibid*, s. 87, § 3; s. 91.

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## CHAPTER SIXTH.

### OF TRIAL.

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#### SECTION I.

##### *Preliminary Provision.*

**220.** After the expiration of the three days allowed to answer the articulation of facts, cases may be tried, according to circumstances, either by evidence taken before the court or by a jury.—*Ibid*, s. 89.

#### SECTION II.

##### *Of Interrogatories upon Articulated Facts.*

**221.** The parties in any suit may, at any time during the trial, and without retarding either trial or judgment, be examined upon articulated facts

pertinent to the issues.\*—Ord. 1667, tit. x, art. 1.—Code, Obl. art. 265.—C. S. L. C., c. 82, s. 19.—C. P. C., 325.

**222.** [Parties are summoned to answer interrogatories upon articulated facts, by means of a process issued in the name of the sovereign by the prothonotary, upon a written requisition to that effect, and ordering the party to appear before the court, or the prothonotary, to answer the interrogatories to be put to him.]—Ord. 1667, tit. x, art. 2.—C. P. C., 325.

**223.** The order to answer upon articulated facts is served upon the person or at the domicile of the party, and not upon his attorney, unless such party is absent or absconding; and a copy, both of the order and of the interrogatories, must be left with him.—If the party is absent, the attorney who has been served, may apply to have delay given him to appear, or, upon indicating the place where such party then is, to have him examined under a commission.—*Ibid.* art. 3.—C. P. C., 236, 329.

**224.** A party summoned to answer interrogatories upon articulated facts must appear

in person at the prothonotary's office, in order to give his answers after being previously sworn.—Nevertheless, if the party be a corporation or legally recognized body or community, it must, by special resolution, name an attorney to answer in its place, and specify the answer he must give and swear to as being that which such corporation intends to give. *Ibid.* arts. 9, 4, 5.—C. P. C., 330, 331, 336.

**225.** If the party served with the rule fail to attend or to answer the questions put to him, a default is recorded against him and the facts may be held to be admitted.—The party who thus makes default may, however, answer the interrogatories afterwards, before the hearing of the case, but he must bear whatever costs are occasioned by his default.—If any dispute arises as to the pertinency of the interrogatories, it is settled at once by the judge, when the answers are taken by the judge; otherwise the parties must go before the court in order to have it decided. Pothier, Proc. civ. 63.

**226.** A party may also be summoned to answer *viva voce*, in open court, or at proof sittings, or before a jury; and his answers are then taken down by the judge or the prothonotary; and the judge may put any other interrogatories he may deem necessary and pertinent. If the party refuses to answer such interrogatories, the judge causes them to be written out and placed in the

\* A husband joined in a suit merely to assist his wife is not a party thereto within the meaning of this article, though under 35 Vic., c. 6, s. 9, he may be examined as a witness under certain circumstances.—Mathieson, *et vir. vs. Whitlock*, Q. B., Montreal, December, 1874.

record, and they are held to be admitted. C.S.L.C., c. 83, s. 100.

**227.** The interrogatories must be drawn up in a clear and precise form, in such a manner that the absence of an answer shall be an admission of the fact sought to be proved.

**228.** The answers must be direct to the question, categorical and precise, and free from injurious or libellous terms.—Ord. 1667, art. 8.

**229.** Every answer which is not direct, categorical and precise, may be rejected, and the facts mentioned in the interrogatory declared and held to be proved.

**230.** The party who applied for the interrogatories upon articulated facts may refrain from putting them, or may, after they are answered, declare that he does not intend to avail himself of the answers; and upon his so refraining, or upon such declaration being made, the court cannot take cognizance of the answers, which are thereupon held not to have been given.

**231.** The answer of any party to a question put to him may be divided in the following cases, according to circumstances and in the discretion of the court:

1. When it contains facts which are foreign to the issue;

2. When the part of the answer objected to is improbable or invalidated by indications of fraud or of bad faith, or by contrary evidence;

3. When the facts contained in the answers have no connection with each other.—*ff. De interrog. in jure faciendis*.—10 Toul., pp. 444 *et suiv.*

**232.** The expense of interrogatories upon articulated facts is borne by the party requiring them, and cannot be included in his taxed costs.—Ord. 1667, art. 10.

**233.** Any party on being served with a rule to answer interrogatories upon articulated facts, may demand the necessary funds to pay his travelling expenses; but when he is before the court he cannot claim to be paid before he is sworn or before answering.—He has a right to have his expenses taxed, and such taxation may be enforced by execution against the opposite party.

### SECTION III.

#### *Of Proofs.*

##### § 1. *Of Inscription for proof.*

**234.** When the case is not to be tried by a jury, either of the parties may inscribe it upon the roll for the adduction of evidence.—It cannot, however, be so inscribed before the expiration of the three days allowed for filing answers to the articulations of facts of the parties.—If there be no articulation of facts and the case is susceptible of trial by jury, the inscription cannot take place until five days after issue joined. C.S.L.C., c. 83, s. 89.

**235.** Notice of the inscription must be given to the oppo-

site party, at least eight days before that fixed for the proof. *Ibid.*, 41 R. of P., S.C.—C.P.C., 261.

**236.** The evidence is taken down in writing, either at length or in notes, according to the provisions contained in this section. C.S.L.C., c. 83, ss. 95 & 18.

**237.** For the purpose of such inscriptions, the prothonotary must keep a roll on which the cases set down for proof are inscribed. 40 R. of P., S.C.

**238.** *In the districts of Quebec and Ottawa every judicial day, except days between the ninth of July and the first of September, and between the twenty-fifth day of December and the tenth day of January, and days on which any term of the Court of Queen's Bench, appeal side, or of the Superior Court, or of the Circuit Court is being therein held, shall be a day on which parties to a suit may be compelled to proceed to proof. In each of the other districts, the judge may, from time to time, by a rule of practice promulgated in open Court, set apart such days in or out of term as may be deemed convenient for proceeding to proof.\**—34 Vic., (1870,) c. 4 s. 1, Q.

**\*Enquête Days at Montreal.**

"Notwithstanding anything contained in article 238 of the Code of Civil Procedure as amended by section one of the act thirty-fourth Victoria, chapter four, and by the next preceding section of this act, the following days shall be days on which parties may

**239.** In the cities of Quebec and Montreal, parties cannot proceed to proof during term, except in the following cases:

1. When the case is inscribed at the same time for proof and hearing, according to art. 243.

2. In summary matters, when the court or judge has given a special order to that effect.—*Ibid.*, s. 94.

3. In *ex parte* cases. *Ibid.*, s. 16.

**240.** In any case wherein it is established upon oath that a witness is about to depart from Lower Canada, and that thereby one of the parties may be deprived of his testimony, one of the judges of the court may, at any stage of the proceedings after [service of summons,] receive the deposition of such witness, in presence of, or after due notice to, the parties; and such deposition has the same effect as if it were taken at proof. The same thing may be done, after issue joined, in cases of evident ne-

be compelled to proceed to proof in all actions or proceedings instituted or had, at the City of Montreal, in the Superior or the Circuit Court, unless any such days are days fixed for the holding of the Court of Queen's Bench, appeal side, namely:

"The first sixteen days of the months of February, March, April, May, June, September, October, November, and December; the first nine days of the month of July; and the last sixteen days of the month of January."—35 Vic. (1871), c. 6, s. 8, Q.

cessity, when it is established upon oath that the witness is prevented, by serious illness or infirmity, from attending before the court. If the witness is still alive and in the province, and his attendance can be procured, at the time of the proof being taken, he must be examined anew in the ordinary time and manner, if it be required by either party. C.S. L.C., c. 83, s. 101. But see 2 L. C. Rep., Malone & Tate p. 99.\*

**241.** The court or judge may, if deemed advisable, and without any commission or other formality, order the proof

*\*1. Notwithstanding any provisions of articles 239, 240, 263, 280, 284, 285, 287, 288, and 1075 of the code of civil procedure of Lower Canada, all depositions of witnesses in cases before the Superior court or before the Circuit court, may, as regards default cases and also by consent of the parties or of their attorneys as regards contested cases, be taken at any stage of the proceedings, at any place, on any juridical day, in or out of term, and may, after being so taken, be sworn to before a commissioner of the superior court.*

*2. The provisions of the foregoing section shall apply with retroactive effect to all depositions already taken in cases now pending, but shall not in any manner affect any judgment of a court already rendered or any proceedings had or to be had in virtue of such judgment.—33 Vic., c. 18, s. 1, Q.*

to be taken, or any person, even if he be a party, to be examined either under the deisory oath, or upon articulated facts, or otherwise, at any place where sittings of the Superior Court or of the Circuit Court are held, before any judge at such place. And in such cases after the record has been four days in the hands of the prothonotary, or clerk, at the place to which it has been sent, the parties may proceed as if the case were there pending.—*Ibid.* ss. 24, 154.

**242.** A copy of such order is transmitted to the prothonotary or the clerk of the court at the place mentioned, together with such part of the record as may be necessary; and the prothonotary or clerk may thereupon take the necessary proceedings to compel the witnesses or the parties to appear at the place named on any proof day, or any day, fixed by the judge, on which a judge will be present at such place, and in the cases of this and of the preceding article the rules contained in articles 248, 249, and 480 apply.—*Ibid.* § 3.

**243.** Any party may, either in his declaration or in any other pleading, or by a notice served upon the opposite party, declare his option that the case shall be inscribed at the same time for proof and for final hearing immediately after proof; and in such case the cause cannot afterwards be inscribed otherwise. Cases may be so inscribed for any day, in term or during proof sittings, set apart by the court for that

purpose, or if no such days have been set apart, then for any day whatever, in term or during proof sittings.—Cases inscribed for proof and hearing have precedence, on days appointed for that purpose, over those inscribed otherwise and fixed for such days.—The days set apart in term or during proof sittings, as above provided, are deemed to be consecutive; and if proof and hearing in any case commenced upon one of such days is not completed on that day, it may be adjourned to any other day thus set apart, and judgment may be rendered on any such day, either in term or in vacation.—The special days for proof and hearing are fixed or changed by rules of practice made and promulgated in the districts of Quebec and Montreal, by a majority of the judges residing in the district, and, in any other district, by the judge holding court therein.—C.S.L.C., c. 83, ss. 19, 20, 21, 22, 23.

## § 2. Of summoning witnesses.

**244.** Witnesses, if they do not appear voluntarily, are summoned at the instance and diligence of the party requiring their attendance, by means of a writ of subpoena, a copy of which is served upon them one clear day at least before that fixed for their examination, the delay being increased at the rate of one day for every additional five leagues, when the distance exceeds five leagues.—C.P. Genève, 181.—C.P.C., 260.—C.P.L., 134.

**245.** Witnesses may be summoned either to declare what they know, or to produce some document in their possession, or to do both.—1 Starke on Evid., 87.—C.S.C., c. 79, s. 4.—C.S.L.C. c. 79, s. 3.—C.P.L. 139, 140, 141.

**246.** Any person residing in Upper Canada may be compelled to appear as a witness, if the court or judge deems it necessary; provided an action for the same cause be not pending in Upper Canada.—C.S.C. c. 79, ss. 4, 5, 6.

**247.** The witness in the case mentioned in the preceding article cannot be summoned without a special order granted by the court or judge, if deemed necessary, and such order must be mentioned upon the subpoena.—*Ibid.* 8, 7.

**248.** Subpœnas are served in Lower Canada by a bailiff of the jurisdiction in which the witness then is, or according to the provisions of article 461, and in Upper Canada by any person whatever, who must return an affidavit of such service.—*Ibid.* s. 10.\*

**249.** Any witness, duly summoned, who, without sufficient cause, fails to attend at the place and time appointed, may, upon a rule served upon him, be condemned, by the court or the judge presiding at proof sittings, to a fine not ex-

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\* This service may be made by the sheriff.—33 Vic. c. 17, s. 1, Q.



ceeding forty dollars, to be recovered, for the use of the crown, in the same manner as any other sum awarded by judgment, independently of any recourse the party who summoned him may have for damages caused by such default, and of imprisonment for contempt, if it lie; provided that at the time he was served with the subpoena a sufficient sum was tendered him for travelling expenses at the rate usually allowed by the court of his domicile.—If the person summoned to appear as a witness resides in Upper Canada, he can only be punished for his default by the court within whose jurisdiction he resides, upon a certificate transmitted by the former court of his default to appear according to the foregoing provisions.—C. S. L. C., c. 83, ss. 104, 109.—C.S.C., c. 79, ss. 8, 9.—C.P. Genève 182.—C.P.C. 263.—C.P.L. 135.

**250.** Any person who is present in the room in which the proof is being taken may be examined as a witness, and is bound to answer, under the same penalties as if he had been regularly summoned.

**251.** Any party to a suit may be subpoenaed, examined, cross-examined, and treated as any other witness; but his evidence cannot avail himself; [the adverse party may however declare, before he closes his proof, that he does not intend to avail himself of his testimony, and in such case it

is deemed not to have been given.]—C.S.L.C., c. 82, s. 15; c. 83, ss. 100, 108, § 11.—12 L. C. Rep., p. 399.

[The answers given by a party thus examined as a witness may be used as a commencement of proof in writing.]\*

**252.** Relationship, or connection by marriage, except that between consorts, and interest, are not objections to the competency of a witness, but only to his credibility.—Upon the improbation of an authentic deed, the testimony of the notaries, attesting witnesses, or other functionaries who witnessed the deed, may be received.—C. S. L. C., c. 82, s. 14.—4 L. C. Rep., 228.—*Nevertheless if consorts are separated as to property, and one of them, as agent, has administered property belonging to the other, the consort who has so administered may be examined as a witness in relation to any fact connected with such administration; provided the court or judge shall, in view of the circumstances of the case, deem it just and advisable to order such examination; whenever such examination shall be allowed, it shall be as unrestricted as would have been that*

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\* Where a party is examined as a witness in a case, he can only be put such questions as could legally be put to any other witness.—Legault *vs.* Legault, Superior Court, Montreal, 20 Nov., 1874.

*Per Curiam.*—Beaudry, J.

of the other consort, whether as regards the admissibility of verbal evidence or otherwise.—35 Vic. (1871), c. 6. s. 9, Q.\*

**253.** If the person to be summoned as a witness is in prison, the party requiring him may, upon petition, obtain a writ of *habeas corpus ad testificandum*, ordering the gaoler to bring him before the court to give his evidence.—*Langue-doc vs. Laviolette*, 18th April, 1854.—1 Pigeau, 277.

§ 3. *Of the examination of witnesses.*

**254.** Any party may demand that during the examination of any witness, the other witnesses should be out of the room in which the examination is taken.—C.P.C., 262.—1 Pigeau, 280.—Ord. 1667, tit. xxii., art. 15.

**255.** Before the deposition of a witness can be taken, he must swear before the judge or the prothonotary to tell the truth, or, in the case of a Quaker, the word "swear" is replaced by the words "solemnly, sincerely, and truly declare and affirm."

**256.** The form of oath and the manner of taking it may be changed according to the religious creed of the witness, in such a manner, however, as

\* The consort cannot be examined under this statute on behalf of the other consort, but only by opposite party.—*Thomson vs. Westcott*, S.C.M. 1873.—Beaudry, J.

to bind him to declare nothing but the truth.—1 Pigeau, 262.

**257.** Any witness refusing to take the oath or affirmation is deemed to refuse to give evidence.—1 Starkie, 91.—C. P. L., 137.

**258.** A witness who is present cannot refuse to give evidence, under pretext that the necessary amount to defray his travelling expenses has not been paid to him.

**259.** Before the witness is admitted to be sworn he may be examined by either of the parties as to his religious belief; and he cannot make the oath or the affirmation, nor give evidence, if he does not believe in God, and in a state of rewards and punishments after death.—1 Starkie, 21, 94.

**260.** No person can be a witness who does not know the importance of an oath, or who is not in the exercise of his mental faculties.—C.P.C., 285.

**261.** [Deaf mutes, who can read and write, may be admitted as witnesses, their oath or affirmation and their answers being written down by themselves.]—1 Pigeau, 283.—3 Bioche, no. 428.

**262.** No bailiff who has served the writ of summons in any suit or action can be a witness in support of the plaintiff's demand, except in respect of such service.—C.S. L.C., c. 83, s. 168.

§ 4. *Of proofs taken by a judge.*

**263.** In contested cases, the witnesses are examined in presence of a judge, the oppo-

site party being either present or duly notified, and the judge may ask the witnesses any questions he may deem necessary. He takes down, or causes to be taken down in writing, under his direction, notes of the material parts of the evidence, and of all objections insisted upon by either of the parties, and of his decisions thereupon, *and the judge may order as many cases to proceed before him at the same time, as in his discretion he deems expedient.*—34 Vic., c. 4, s. 2, Q.—C. S. L. C., c. 83, s. 95.—*Witnesses may be examined before a commissioner.*—33 Vic., c. 18, s. 1, Q.—See note to art. 240, ante.

**264.** The notes of evidence are read, and if necessary, explained to the witness, who may make the necessary additions or alterations in order to express correctly the material parts of his evidence, they are then signed by him, if he can write, if not, that fact is mentioned; they are finally signed by the judge, and constitute and are held to be the evidence of the witness.—Ord. 1667, tit. 22, art. 16.—C. S. L. C., c. 83, s. 95, § 2.—C. P. C., 272, 274.

**265.** Repealed.—34 Vic., c. 4, s. 3, Q.

**266.** The judge takes down, or causes the prothonotary to take down, notes of all admissions made verbally by the parties; and such notes, signed by the judge, make proof in the same manner as if they were signed by the parties.—*Ibid*, s. 97.

**267.** The witness must first be asked and must declare his names, surname, age, quality or occupation, and domicile.—Ord. 1667, tit. 22, art. 14.—C. P. Genève, 193.—C. P. C., 262.

**268.** The opposite party may establish, by a preliminary examination of any witness, or in any other manner, whatever grounds he may have for objecting to such witness\*.—Ord. 1667, tit. 23, art. 2.—1 Starkie, 211.—C. P. C., 289.

**269.** A party cannot impeach the credit of a witness produced by himself, but he may prove by others the contrary of what such witness has stated, or, by leave of the judge, he may prove that at other times he has made a statement inconsistent with his present testimony; provided, in the latter case, the witness be first questioned upon the

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\* The objections allowed to be made against a witness are—mortal enmity, subornation, want of age, madness or insanity, inebriety at the time of the examination, variance and contradiction in his statements, condemnation for felony or forgery so long as the punishment has not been undergone or remitted, and conviction of perjury even though punishment should have been undergone or remitted.—I Cauchot, 90.—Poth., *Pro. civ.*, 60-1.—1 Pigeau, p. 283.—1 Starkie, 211-2.—C.S.C., c. 99, s. 115.

subject.†—1 Couchot, 90.—1 Starkie, 215 *et seq.*—2 Powell, 379, 380.—*Contra*, Methot *vs.* Lalonde dit Ganivas.—11 L. C. Jurist, 301.

**270.** Witnesses are examined by the party producing them, or his counsel, but only touching the facts in issue; and the questions must not be leading, unless the witness evidently attempts to elude the question or to favor the other party.—1 Starkie, 169, 170.—2 Powell, 376-9.

**271.** When a party has ceased examining a witness he has produced, the opposite party may cross-examine such witness in every shape upon the facts referred to in his examination in chief; or he may require an entry to be made of his declining to cross-examine.—1 Starkie, 186.—2 Powell, 30, 380, *et seq.*

**272.** A witness may be re-examined by the party producing him, when new facts have been elicited on the cross-examination, or for the purpose of explaining his answers to the cross-questions.—Webster *vs.* Grand Trunk R. R., 23rd Oct., 1854.

**273.** [When witnesses are called to prove the identity of any object in the possession of one of the parties, the court or

judge may order that the party shall, either in court or at any other convenient place or time, exhibit such object to the witnesses thus called to give evidence concerning it; and in default of his so exhibiting the object, it will be held to have been identified.—The court may likewise order any witness who is in possession of any object which is the subject of the litigation, to produce it, under the same penalties, in case of default, as for refusing to answer pertinent questions.]

**274.** A witness may object to answer questions put to him, if his answering would expose him to a criminal prosecution.\*—This objection can only be made by the witness himself.—1 Starkie, 192-8.—2 Powell, 388.—1 Greenleaf, 545.—C. P. L., 136.

**275.** He cannot be compelled to declare what has been revealed to him confidentially in his professional character as religious or legal adviser, or as an officer of state where public policy is concerned.—Parfait Notaire, 83.—1 Starkie, 184-5-6.—2 Powell, 60.—1 Chitty's Archbold, 67.—1 Pigeau, 278.

**276.** A witness is bound to

† Copies of the depositions of witnesses examined in another cause may be filed in a case pending at *Enquête* for the purpose of discrediting a witness examined therein.—O'Connor *vs.* Brown, 12 L. C. Jurist, 28.

\* In a *qui tam* action for a penalty, a defendant may claim exemption from answering any question, on the ground that every question which could be put to him in the action had and must have a direct tendency to criminate him.—Burton *vs.* Young, 11 L. C. Rep., 379.

produce any document in his possession touching the matter in issue, and to allow a copy or extracts thereof to be taken, if it is a private writing; and such copies or extracts, certified by the prothonotary, are entitled to the same credence as would be given to the originals.

**277.** Any witness, who, without valid reason, refuses to answer or to produce documents or other things connected with the suit and in his possession, may be held by coercive imprisonment to do so.

**278.** A witness cannot withdraw without the permission of the judge.—C. P. Genève, 198.

**279.** If the examination of a witness cannot be completed on the day he appears, he is bound to attend again on the next following juridical day, or on such other day as is assigned to him by the judge, which day is mentioned in the notes of his evidence or entered upon the registers of the court, and in default he is liable to the same penalties as for refusing to attend upon the subpoena.

**280.** It is the duty of the judge to ask the witnesses if they require taxation, and if they do to tax their expenses, with due regard to the nature of the voyage and the duration of their stay.—Ord. 1667, tit. 22, art. 19.—C. P. C., 274, 277.

**281.** The taxation may be enforced by execution against the party who summoned the witness, after the delay and

in the manner prescribed for any judgment of the court. And execution may be sued out by the witness against the opposite party condemned to pay the expenses of such witness, provided that no execution has already been sued out by the party who obtained the judgment, or that the amount allowed the witness has not already been paid to such party or his attorney in virtue of a duly receipted bill of costs.—C. P. Genève, 200.—C. S. L. C., c. 83, s. 153.—De Beaumont *vs.* Gauthier, and Gauthier and Pratt, 11 L. C. Jurist, 49.

**282.** When one party has closed his proof, the other party may enter upon his counter-proof, and have his witnesses examined.

**283.** If, on the day fixed for proof, the party who is bound to proceed does not produce any witnesses, or give any valid reason for their absence, his proof may be declared closed.

#### *Evidence by Stenography.*

*"In all suits to be tried by a jury, or which are inscribed for proof and hearing at the same time, either in the Superior Court or in the Circuit Court, either of the parties may, by a demand in writing, accompanied by a deposit of a sufficient sum of money to pay a stenographer, require that the evidence in the case shall be taken by means of stenography. In every such case the stenographer shall be named by the prothono-*

tary, unless the parties mutually agree upon one, and the said stenographer shall be sworn before the court or judge, or the prothonotary, or the clerk of the Court, and he shall, at the conclusion of each testimony, read over the same to the witness, and such testimony shall, when afterwards transcribed in ordinary writing, form the record of the evidence in the cause; and, in the case of trials by jury, the requirements of articles 397 and 398 of the Code of Civil Procedure, may be fulfilled through the intervention of the stenographer. In cases inscribed for proof and hearing at the same time, such evidence taken by means of stenography shall be a sufficient fulfilment of the last part of article 263, and of article 264 of said Code; and the sufficiency of the deposit required to pay a stenographer shall be determined by the court or judge, or by the prothonotary.

"In any case in the Superior or in the Circuit Court, the parties may, by consent, employ the services of a stenographer, and cause him to be sworn, and the evidence to be taken in the manner mentioned in the next preceding section.

"The expenses of employing a stenographer shall form part of the taxed costs of the case.—35 Vic., c. 6, ss. 10, 11, 12, Q."

### 36. Of proofs taken down at length.

**284.** Upon the consent in writing of all the parties to a case, and subject to such addi-

tional costs and fees as may from time to time be fixed by tariff, the proof may be taken down in writing in the manner hereinafter provided, either before a judge or before the prothonotary, who, in such case, may exercise all the powers of a judge, except as to the objections which must be reserved for the decision of the latter.—If the judge is unable to attend court on the day fixed for taking proofs, the prothonotary may preside over them, and in such case he exercises all the powers of the judge, except as regards the objections made by either party, which must be taken down in writing and reserved for the decision of the court at the final hearing of the case.—C.S.L.C., c. 83, s. 18.—27 & 28 Vic., c. 39, ss. 16, 17.

Witnesses may also be examined before a commissioner.—33 Vic., c. 18, s. 1, Q.—See note to art. 240, ante.

**285.** With the consent of the parties proofs may be taken on any juridical day during term or vacation, before the prothonotary, who presides over them and acts in the manner hereinbefore provided with respect to proof sittings.—See note to art. 240, ante.

**286.** The court or judge may assign the different rooms wherein proofs may be taken in the court house.—C.S.L.C., c. 83, s. 17.

**287.** The witnesses must take the necessary oath or affirmation before they are examined, and the prothonotary must make a note of the

fact of their having done so.—1 Pigeau, 279.—See note to art. 240, *ante*.

**288.** The deposition of each witness is written out at full length by the prothonotary, or by some person employed by him for that purpose.—The commencement of the deposition must mention the name of the person presiding over the proof; the designation of the parties; the names, surname, age, quality or occupation and place of residence of the witness; and the fact of his being sworn.—Ord. 1667, tit. 22, art. 14.—C. P. C., 262.—See note to art. 240, *ante*.

**289.** The deposition must contain all that the witness declares concerning the matter at issue between the parties, without omitting any of the circumstances, and as much as possible in the words used by the witness; unless, upon objection by one of the parties, the judge orders otherwise.—*Ibid*, art. 17.—C. P. C., 271.

**290.** If the parties disagree as to the pertinency of any question or cross-question, it must be written down in the body of the deposition, either to be submitted for the decision of the judge or to guide the witness in his answer.

**291.** The objections made by the parties must likewise be inserted in the body of the deposition, as well as the decision thereon, or any consent of the parties concerning the same.

**292.** The witnesses are examined in the manner provided in § 3 of this section.

**293.** When the deposition of a witness is concluded, it is read to or by him, he is asked to declare whether it contains the truth, whether he persists therein, and whether he knows anything further, and he must sign it. If he cannot sign, that fact is mentioned, as well as the reading of the deposition.—Ord. 1667, tit. 22, art. 16.—C. P. C., 271.—2 Bioche, 233-4.

**294.** If the witness adds to, strikes out, or alters any portion of his deposition, the changes must be inserted in the margin or at the end, before the closing and acknowledgment of the deposition.—Ord. 1667, tit. 22, art. 18.—C. P. C., 272, 273.

**295.** No credence is given to unauthenticated marginal notes, nor to words written upon others, nor to interlineations. The number of words struck out and of marginal notes must be mentioned in the jurat.

**296.** At the examination of each witness, either the parties or their attorneys or counsel must be present or have been duly called. The other witnesses cannot be present if either of the parties object.—Ord. 1667, tit. 22, art. 15.

**297.** Articles 259, 260 and 261 apply likewise to proofs written down at length.

**298.** When one of the parties has closed his proof, the other party may proceed with his counter-proof and have a subsequent day fixed for that purpose; a sufficient delay being allowed to summon his witnesses.

**299.** If on the day fixed for his proof a party fails to appear or to produce witnesses, and furnishes no valid excuse for their absence, or for not proceeding, his proof may be declared closed, and the opposite party may, if he thinks proper, have a day fixed for his own proof.—43 Rule of Practice.

§ 6. *Of proofs before examiners.*

**300.** The court may appoint a competent person as an examiner to take the proof, when, by reason of the nature of the dispute, or the number and distance of the witnesses to be examined, or the intricacy or multiplicity of the facts to be proved, or any other sufficient cause, it is shown to the court, by any of the parties concerned, that the ends of justice will be better attained by the appointment of such examiners.—C. S. L. C., c. 83, s. 108.

**301.** The rule appointing an examiner must specify the place where the proof shall be taken, and the delay within which it must be concluded. This delay may be extended by the court or judge upon sufficient cause shown.—*Ibid.*

**302.** The examiner, before entering upon his functions, must be sworn before a judge, or a commissioner of the superior court, to fulfil his duties faithfully and impartially; and such oath must be in writing and be annexed to his return.—*Ibid.*

**303.** He must give the parties at least eight days

notice of the time and place at which he will begin the examination.—*Ibid.*, § 4.

**304.** The witnesses are summoned, by means of a writ of subpoena issuing from the court before which the suit is pending, to appear before the examiner, who may administer the oath to them, may receive any documentary evidence produced by the parties, and has all the powers of a judge presiding over proofs stated in § 4 of this section.—*Ibid.*, §§ 5, 6, 7, 8, 9, 10.

**305.** Any party to the suit may also be summoned to answer interrogatories upon articulated facts *viva voce* before the examiner. The latter may administer the necessary oath, and put such further questions as he may deem necessary and pertinent.—If the party refuses to answer any such questions, they are reduced to writing, and the facts contained in them are held to be proved.—If the party summoned fails to appear, the party who took out the order cannot take advantage of the default unless he has caused him to be served with the interrogatories which he intends him to answer.—*Ibid.*, § 11.

**306.** After completing the proof, the examiner must make a return of his proceedings, on or before the day fixed by the court or judge.—*Ibid.*, § 12.

§ 7. *Of commissions for the examination of witnesses.*

**307.** When any of the witnesses or of the parties re-



side beyond Lower Canada, or even within Lower Canada at a distance of more than thirty miles from the place where the court is held, the party who requires to examine them may obtain a commission appointing one or more persons to receive the answers of such witnesses or parties.\*—C. S. L. C., c. 83, ss. 25, 105, 106.—C. P. L. 138.

**308.** Application for that purpose must be made [by the plaintiff,] within four days after the articulations of facts are completed; except under particular circumstances, left to the discretion of the court or judge. Such an application by the defendant must be made within the same delay if the case is to be tried by a jury or is inscribed at the same time for proof and hearing; [but if the proof is taken in writing, at length, the defendant may make the application within the four days after the closing of the plaintiff's proof.] It may be granted by the court or by a judge in vacation, upon its being satisfactorily shown by affidavit that the commission is

\* In the case of commissions from foreign courts for the examination of witnesses in Quebec (and Ontario), the commissioners can compel the attendance of such witnesses under the statute 31 Vic., c. 76; and it was held, in the S. C. at Montreal, in the case of *Smith et al., exp. & Hempstead*, 10 L. C. J. 140, 1872, that even without this statute such attendance would be compelled *under comity of courts*.

necessary, and after notice to the adverse party.—*Ibid.* ss. 106, 107, § 2.

**309.** The commissioners are chosen as follows:—If both parties join in the commission each furnishes four names. From the list thus formed each party alternately strikes out two names; this is done in the presence of the judge, who out of the four remaining names chooses three, to whom the commission is addressed.—If both parties do not join in the commission it is addressed to the persons chosen by the party who applies for it.—*Ibid.* s. 105, § 3.

**310.** The court or judge fixes the number of commissioners who must be present in order to execute the commission, and gives directions and authority for swearing witnesses.—*Ibid.* s. 107.

**311.** Annexed to the commission are the interrogatories and cross-interrogatories of each party, which shall have been allowed by the judge after due notice to the other party.—*Ibid.* s. 105, § 2.

**312.** The commission must also be accompanied with instructions addressed to the commissioners, under the signature of the judge, to guide them in its execution.—*Ibid.* s. 107.

**313.** The return consists of a certificate of the commissioners who acted, endorsed upon the commission, and stating that the execution appears by the schedule thereto annexed.—The return must be under a sealed envelope, upon

which are endorsed an indication of its contents and the name of the cause. It cannot be opened and published without an order from the court or judge.—*Ibid.* s. 105, § 2.

314. The party who applies for a commission must himself see to its being transmitted and executed.—*Ibid.* s. 105, § 3.

315. If both parties have joined in the commission, both are equally bound to have it transmitted and executed.—*Ibid.*

316. A failure to return the commission will not prevent the court from proceeding with the hearing in the following cases:

1. If it appears that the party applied for the commission solely in order to retard the judgment;

2. If the return has been delayed longer than justice and equity required.—*Ibid.* s. 107, § 3.

#### § 8. Of proofs ex parte.

317. When the defendant fails to appear or to plead to the action, the plaintiff, in suits other than those mentioned in articles 89, 90 and 91, may inscribe his case for proof in term or out of term, if any is necessary, and such proof is then proceeded with before a judge, or before the prothonotary who must swear the witnesses, take notes of their evidence, and do whatever else it would be the duty of a judge of the court to do in matters of proof.—A defendant foreclosed from pleading is entitled to at least one clear day's notice be-

fore proof; and he may cross-examine the witnesses, and make such objections as he thinks proper, of which the prothonotary must take notes; but he is not entitled to produce witnesses.—Proofs *ex parte* may be taken at any time, except between the ninth of July and the first of September.—C.S.L. C., c. 83, ss. 13 § 2; 16, 98, 99.

318. All evidence offered by the plaintiff is filed and remains in the record in the same manner as if the defendant had appeared and pleaded to the action.—*Ibid.* s. 102.

#### § 9. Of the incidents of proofs.

319. All applications to the court upon any incident of the proof may be made by motion, stating succinctly the object and reasons of the application.

320. The court may, at any time before judgment, in its discretion and under such conditions as it deems just, allow any pleading to be amended so as to agree with the facts proved, and any pleading is sufficiently sustained if the facts alleged agree sufficiently with the facts proved, and if in the opinion of the court the opposite party has not been led into error as to the real nature of the facts intended to be alleged and proved.—*Ibid.* s. 77, § 2.

#### SECTION IV.

*Of Experts, Viewers, References in Matters of Account, and Arbitrators.*

321. Before deciding upon the merits of the case, the

court may, if necessary, order an extraordinary investigation in the cases hereinafter mentioned, either before, during, or after the proof.—C.S.L.S., c. 83, s. 81.

§ 1. *Of viewers and experts.*

**322.** Whenever the facts in contestation between the parties can only be verified by view of the object or premises, or whenever the evidence produced by each party is contradictory, or when the nature of the contest requires it, the court may, of its own accord or upon the application of either party, order the facts to be verified by experts and persons skilled in the matter.—The order for experts must specify clearly and distinctly the matters to be verified.—1 Pigeau, 298.—Pothier, Proc. civ. 44.—C. S. L. C., c. 83, s. 81.—C. P. C. 302.

**323.** [The investigation must be made by three experts agreed upon by the parties, unless they agree to its being made by one only.]—Ord. 1667, tit. 21, arts. 9, 13.—1 Bornier, 172.—C.P.C. 303.—1 Couchot, 88.

**324.** If, at the time of the order for experts, their appointment has been agreed upon by the parties, the order records such appointment.—1 Couchot, 88.—C. P. C. 304.

**325.** If the experts are not agreed upon by the parties, the court fixes a day on which the latter must attend before the court or judge in order to appoint them; and in default of *an order to that effect either*

party may summon the other to attend as aforesaid, within a reasonable delay, for the purpose of such appointment.—Ord. 1667, tit. 21, art. 9.—Pothier, Proc. civ., 44.—C.P.C. 305.

**326.** [The parties are bound to attend on the day appointed, and if they then fail to agree upon the three experts the court appoints such experts for them.—In the case of any of the experts being validly recused others are appointed in their stead, in the manner above described.]—Ord. 1667, tit. 21, art. 9.—Pothier, 45.—C. P. C. 306, 309.

**327.** The grounds for refusing an expert are: relation or alliance, to the degree of cousin-german inclusively; intimacy; enmity; subornation; interest; being in the domestic service or other employ of one of the parties; being a party in a similar suit, or the attorney or agent of a party in the case; and, generally, the grounds of exclusion applicable to witnesses.—Pothier, Proc. civ., 45.—C. P. C. 310.

**328.** As soon as the experts are named, either party may have the order served upon them, together with a requisition calling upon them to be sworn.—Ord. 1667, tit. 21, art. 10.

**329.** If any one of the experts neglects or refuses to be sworn or to act, either of the parties may summon the other to attend before a judge in order that another person may be named in the proper manner to replace such expert.—Pothier 48.—C. P. C. 316.

**330.** The experts, before taking any proceedings in the investigation, must, on pain of nullity, be sworn to perform their functions with impartiality and to the best of their ability.—This oath must be in writing, and be certified by the person who administers it.\*—

\* Form No. 30.—*The oath to be administered to experts.*

I, A. B., of the parish of—, in the county of— (if there be two or more persons to be sworn, say, I, A. B., of—, and I, C. D., of—), do make oath and swear, that in the presence of E. F., the plaintiff, and G. H., the defendant, named in an interlocutory judgment pronounced in (here insert the name of the court) in the district of—, bearing date the—day of—, or in their absence, after due notification shall have been given them, to attend at a place to be designated, and on a day and hour to be specifically named to them respectively, I will faithfully proceed as an expert to the view and examination required by the said interlocutory sentence; and that I will truly report my opinion in the premises, without favour or partiality towards either of the said parties; So help me God.

Form No. 31.—*Certificate, to be made and signed by the commissioner, of the due administration of the oath.*

Sworn before me,—, a commissioner of the superior court in the district of—,

**331.** The oath must be taken before a judge, or the prothonotary, before a commissioner of the superior court, before an expert already duly sworn, or before any other person indicated in the order for experts.—Pothier, Proc. 46.—C. S. L. C., c. 83, ss. 82-3.

**332.** A copy of the order for experts, together with the necessary papers, must be given to them, after the prothonotary has taken a receipt therefor.—Ord. 1667, tit. 21, art. 10.

**333.** The experts are bound to fix the time and place at which they will proceed with the investigation, and to notify the parties, allowing a delay of at least three days when the distance from the domicile of the parties respectively does not exceed five leagues, and one day more for every additional five leagues.—Pothier, Proc. 46.

**334.** The experts must hear the parties and the witnesses in accordance with the terms of the order naming them; each of them is authorized to administer the oath to the witnesses or the parties, as the case may be, and the witnesses are summoned to attend before the experts, whatever may be the distance.—C. S. L. C., c. 83, s. 84.\*

(or sub-delegate authorized by the commission (or the judgment, as the case may be,) hereunto annexed, as the case may be) at—on the—day of the month of—, in the year—.

**335.** The evidence of the witnesses must be taken down in writing, certified and annexed to the report of the experts, and it must mention whether the witnesses are related or allied to the parties, and in what degree, and whether they are in the employ of either party, or interested in the suit.—*Ibid.* s. 85.

**336.** [If all the experts agree, they make one and the same report, if not, each of them makes his separate re-

port, if he thinks proper.]—Ord. 1667, tit. 21, art. 13.—Pothier, Proc. 47.—1 Couchot, 88.

**337.** The report of the experts must be made on or before the day fixed by the court. It must contain reasons and details, so as to enable the court to appreciate the facts; it must also be signed by the experts or be in the form of a notarial original.—Law Reporter, 57; Rodier *vs.* Mercille, Montreal, 16 Sept. 1850.—Ord. 1667, art. 12.

**338.** If the experts delay or refuse to file their report, they may be summoned, with the same delays as in ordinary procedure, by a rule of court, to shew cause why they should not be condemned, and even held by coercive imprisonment, to do so.—C. P. C., 320.

**339.** The court is not bound to adopt the opinion of the experts nor that of a majority of them.—C. P. C., 323.

§ 2. *Of references in matters of account to accountants and practitioners.*

Form No. 32.—*The oath to be administered to witnesses.*

I, —, (*insert the name, profession or quality and place of residence of the witness,*) do make oath and swear that I am not related or allied to, or a servant or domestic of E. F., the plaintiff, or G. H., the defendant, and that I am not interested in the event of the cause depending between them, (*or, if witness says he is, state in what degree he declares himself to be related or allied to either and which of the parties, or what situation he holds in the family of either of them,*) and I do also swear that the evidence which I shall give between the said parties before the experts (*or arbiters or arbitrators, as the case may be,*) named in the interlocutory judgment pronounced by (*here insert the name of the court,*) in the said cause, shall be the truth, the whole truth, and nothing but the truth; So help me God.

**340.** In matters where accounts have to be rendered or adjusted, or which require calculations to be made, and in matters of separation of property, or partition of community or succession, the court may refer the case to one or more persons skilled in such matters; and such persons are subject to the rules above prescribed concerning experts.—Such accountants and practitioners

have the powers given to experts by the foregoing articles, and are bound to follow the directions of the court; and their reports are adopted, homologated or rejected in the same manner as reports of experts.—C. S. L. C., c. 83, s. 80.

### § 3. *Of arbitrators.*

**341.** The court may, of its own motion or upon the application of one of the parties, refer to the decision of arbitrators any case of dispute between relations, concerning partitions, or other matters of fact which it is difficult for the court to appreciate; and also any other case, if the parties consent to it.—Ord. 1566, art. 83.—1 Pigeau, 248.

**342.** The preceding provisions relating to experts apply to arbitrators, in so far as they are compatible with those of the present paragraph. Nevertheless, arbitrators need not be sworn unless the order appointing them requires it.—1 Pigeau, 249.

**343.** Arbitrators can only adjudicate upon the matters submitted to them.—They are bound to observe the same formalities as experts in the investigation of facts, according to articles 334 and 335, unless they are at the same time appointed mediators, but they are not bound to give the reasons of their decision.—They cannot award costs, unless the court has empowered them to do so.—1 Pigeau, 248.

§ 4. *General provisions applicable to the three preceding paragraphs.*

**344.** [Experts, accountants, practitioners, and arbitrators, may demand that the amount of their remuneration, costs and disbursements be paid into court previously to the opening of their report and subject to the order of the court.—If they do not demand this deposit they have a recourse against all the parties to the suit jointly and severally.]—Brown & Wallace, 11 L. C. Reports, 182.

**345.** The party who intends to avail himself of a report of experts, practitioners or accountants must make application to have it received; and if the opposite party desires to take advantage of any informalities or causes of nullity therein, he must do so by a counter-application.—Poth., Proc. 47.—*Contra*. Ord. 1667, tit. 21, art. 14.

**346.** If a report of experts, practitioners or accountants is free from informalities or causes of nullity, it is received, together with the depositions and documents annexed, as part of the evidence in the case.—C. de Paris, 184.

**347.** In the case of an award of arbitrators, the party intending to avail himself of it may apply for its homologation and for judgment in conformity with it. The other party cannot oppose it except by an application to have the

report declared inadmissible on the ground of informality or some other cause of nullity.

## SECTION V.

### *Of Trial by Jury*

#### § 1. Preliminary provisions.

**348.** A trial by jury may be had in all actions founded on debts, promises, or agreements of a mercantile nature, either between traders or between traders and non-traders; and also in all suits for the recovery of damages resulting from personal wrongs, or from offences or quasi-offences against moveable property.—5 L. C. Rep. 406.—C. S. L. C., c. 82, s. 26.—P. C. L., 313.—(Since Code.) *Fulton vs. Stevenson*, 13 L. C. Jurist, 112.

**349.** It is had at the option of either of the parties, when the amount claimed by the suit exceeds two hundred dollars, and only upon the issues raised upon the merits of the case.—C.S.L.C., c. 83, s. 26, § 2, & s. 29.—C.P.L., 494.

**350.** The option is made either in the declaration or in the pleas, or by a special application to the court within four days after issue joined, or, if these four days expire out of term, the application may be made on the first day of the next term, provided notice be given to the opposite party within four days after

issue joined.\*—64 R. of Prac.—C.P.L. 494-5.—6 Jurist p. 115-6, 38, 39.—If there is no articulation of facts, the inscription cannot take place until five days after issue joined.

**351.** The jury is composed and summoned in the manner hereinafter provided.—C. S. L. C., c. 83, s. 30.—C.P.L., 493.

**352.** No trial by jury is fixed until the court or judge, upon the motion and suggestion of the party claiming the same, has assigned the fact or facts to be inquired into by the jury, and has decided all issues raised respecting the quality of the parties.†—C.S. L.C., c. 83, s. 29, 31.

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\* Option of a jury trial may be made by the answers to pleas as well as by declaration and plea.—Brown, appellant, and the Imperial Fire Insurance Co., respondents. Q. B., Montreal, 14 Dec., 1875, reversing judgment of the Superior Court. The motion referred to in this article may be made at any time before the expiration of the time fixed, even before issues are joined.—Mason vs. Gebhardt, Q. B., Montreal, 22 June, 1876, reversing judgment of the Superior Court.

† It is ordered that in all cases in which the fact or facts to be enquired into by a jury is or are assigned under the 352nd article of the Code of Civil Procedure, the party making option of a trial by jury do file with his factum or case (25) twenty-five printed copies of the assignment for

**353.** Each party must furnish the judge with a statement of the facts which he considers ought to be submitted to the jury.—*Ibid.* s. 31.

**354.** The assignment of the facts may, however, be dispensed with, by consent in writing of all the parties to the suit.—C.S.L.C., c. 83, s. 32.

**355.** The trial must be had at the place where the suit is brought, unless, for sufficient cause, the court or judge orders that it shall be had in another district; and in such case the verdict is returned with the record to the place where the suit was commenced.

**356.** In any suit for damages brought against a public officer by reason of any illegal act done by him in the performance of his functions, he may apply to have the trial take place in another district, upon shewing that the case cannot be tried impartially and without prejudice in the district in which the suit is brought.—This application may be granted either by the court or

by a judge, and the venue changed accordingly.—C.S.L.C., c. 83, s. 28; c. 101, s. 3, § 3.

### § 2. *Of the jury.*

**357.** The prothonotary of the superior court in each district is bound to make a list of the persons qualified to serve as jurors in civil causes, by taking from the list deposited in his office of persons qualified, according to the terms of the statute, to serve as grand jurors in criminal cases, and in the order in which they then are, the names of all persons residing within a distance of five leagues from the court.—27 and 28 Vict., c. 41, s. 9, § § 1, 2.

**358.** The qualification required for such jurors is that they must be males of full age, proprietors of real property of the assessed value of two thousand dollars, or tenants of real property of the assessed annual value of two hundred dollars,\* in cities or towns of at least twenty thousand souls; and in any other municipalities they must be owners of real property, of the assessed value of one thousand dollars,† or tenants of real property of the assessed annual value of one hundred dollars.‡ Any justice

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facts, of which copies the prothonotary or clerk shall distribute twelve copies to the jury, and the expense of printing said assignment shall, in the discretion of the court or judge, form a portion of the costs in the case. Montreal, 29th April, 1871. Signed, W. C. Meredith, C. J.; A. Stewart, J., &c., &c.

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\* Now three hundred dollars, 32 Vict. c. 22, s. 2, Stat. of Q.

† Now fifteen hundred dollars.—*Ibid.*

‡ Now one hundred and fifty dollars.—*Ibid.*



of the peace may be a juror.—*Ibid.* s. 2, § 2, 3. \*

**359.** Persons cannot be jurors:

1. Who have not the qualifications and conditions required by the two preceding articles;

2. Who are afflicted with blindness, deafness or any other physical infirmity incompatible with the discharge of the duties of a juror.

3. Who are arrested or under bail upon a charge of treason or felony, or who have been convicted thereof.

4. Who are aliens, except in cases where, according to law, one half of the jury must be

composed of aliens.—*Ibid.* s. 2, § 3.

**360.** The following persons are exempt [absolutely] from serving as jurors:

Members of the clergy;

Members of the executive council, of the legislative council, or of the legislative assembly.

Practising advocates and attorneys;

Prothonotaries, clerks of the peace, and clerks of the circuit court.

Sheriffs and coroners;

Officers of her majesty's courts;

Gaolers and keepers of houses of correction;

Officers of the army or navy, on full pay;

Pilots duly licensed;

Schoolmasters not exercising any other profession;

[All persons employed in the running of railway trains.]

*In addition to the persons exempt absolutely by article 360 of the code of civil procedure from serving as jurors in civil cases, the following persons shall likewise be absolutely exempt:*

1. *Members of the privy council, or of the senate, or of the house of commons of Canada, or persons in the employ of the government of Canada;*

2. *Members of the executive council, legislative council or legislative assembly of Quebec, or persons in the employ of the government of Quebec, or of the legislature thereof;*

3. *The clerk, treasurer, and other municipal officers of the*

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\* Sections two and three of the act thirty-second Victoria, chapter twenty-two, in so far as regards the value of the property required to qualify grand and petit jurors, shall not apply to the county of Gaspé, but in that county such value shall be as follows:

For grand jurors, in the case of proprietors, an assessed total value of over one thousand dollars, and, in the case of occupants, and lessees, an assessed annual value of above one hundred dollars.

For petit jurors, in the case of proprietors, an assessed total value of at least four hundred dollars, but not more than one thousand dollars, and, in the case of occupants and lessees, an assessed annual value of at least forty dollars, but not more than one hundred dollars.—33 Vic. c. 13, s. 4, Q.

*cities of Quebec and Montreal ;*

4. *Officers, non-commissioned officers and privates of the active militia ;*

5. *Registrars ;*

6. *The persons mentioned in section twenty-three of the act fourth and fifth Victoria, chapter ninety.\* 33 Vic., c. 13, s. 1, Q.*

The following persons are exempt from serving as jurors provided they have given notice of their intention to claim such exemption in the manner provided by the act 27 & 28 Vict., c. 41, s. 3.† 5, Q.

Persons above sixty years of age.

All persons in the civil service of the government, acting under imperial or provincial appointment ;

Officers of the customs ;

Persons employed in the public offices ;

Persons in the service of the post-office ;

All persons who have been in military service for a period of seven years.

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\* Members of the council and board of arbitration of the Montreal board of trade.—32 Vic. c. 22, s. 5, §§ 19, 21, Q.

† (This section having been repealed by 32 Vic. c. 22, s. 1, Q., a question arises as to whether the method therein pointed out is to be still followed as to claiming exemptions under this article.

Physicians, surgeons, and apothecaries ;

Cashiers, tellers and accountants of incorporated banks ;

Masters and crews of steam-boats.\*

All persons employed in the working of grist-mills ;

Firemen and volunteers.—27 & 28 Vic., c. 41, s. 3.—C. S. C., c. 87.

When more than one member of any commercial firm have been summoned to attend as jurors, before any court, or upon any trial in civil or criminal cases, the court or judge presiding at such trial may, in his discretion, exempt all the members except one of such firm, notwithstanding that no notice may have been given of the intention to claim exemption.—33 Vic. c. 13, s. 3, Q.

361. The list of jurors for civil cases is revised from time to time by the prothonotary according to the list of grand jurors for criminal cases, by striking out the names of deceased, absent, or disqualified persons and adding the names of new persons qualified to serve as jurors, [and also by striking out the names of all those whom the sheriff returns in any case pending as dead, absent, or incompetent, or who are declared by the court to be so.]—*Ibid* s. 9, § 1.

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\* Quære : Whether this exemption could be claimed except during season of navigation.—v. 32 Vic. c. 23, s. 5, § 15 Q.

§ 3. *Of the special list and the striking of the panel.*

**362.** The court, upon motion of either of the parties, may fix a day for striking the panel, and another day for the trial, either in term or in vacation, and may order the summoning of a jury to try the issues, either at the place where the court is held or in any other district, according to circumstances, and may, in the latter case, order the record to be sent to the prothonotary of the court in such district.—C. S. L. C., c. 83, ss. 27, 28.—64 R. of Prac.

**363.** If the suit be of a mercantile nature, the jurors to be summoned are taken and selected only from amongst the persons speaking the required language, who are designated in the jury-list as merchants or traders, and in the order in which they stand upon the list; and in cases where one of the parties is not a trader, and objects to a jury composed wholly of traders, the court or judge may order that one half only of the jury be composed of traders.—If there are not upon the jury-list the number of merchants or traders that ought to be summoned to form the jury, the special list is completed by taking other names from the jury-list in the order hereinbefore prescribed.—27 and 28 Vic., c. 41, s. 9, §§ 4, 5, 6, 11.

**364.** Upon the application of either of the parties, if the

opposite party does not object, the court or judge may order the jury to be composed exclusively of persons speaking the French language or of persons speaking the English language. If the parties are of different origin, and one of them demands a jury *de mediatate lingue*, the court or judge orders the jury to be composed of equal numbers of persons speaking the French language and of persons speaking the English language.—*Ibid.*, §§ 7, 8.

**365.** The motion for the fixing of a day for trial must be accompanied with a deposit in the hands of the prothonotary, of the amount fixed by the court.—65 Rule of Prac.

**366.** After the granting of such motion by the court or judge, the prothonotary takes from the list of jurors for civil matters, commencing with the name of the first juror having the required qualifications, following that of the last juror [included in the special list last previously made] the names of forty-eight jurors, whose names are first on the list, having, in the special cases, the qualifications required according to the order of the court or judge, and makes a special list thereof, to form part of the record in the case.—C. S. L. C., c. 84, s. 43.—27 & 28 Vic., c. 41, s. 9, § 3.—3 Blackstone, 358.

**367.** Upon the day and at the hour fixed for striking the panel, the parties must attend for that purpose at the protho-

notary's office.—69 and 71, Rules of Practice.

**368.** Each party strikes alternately from the special list prepared by the prothonotary the name of one of the persons therein designated, to the number of twelve each, paraphing each name struck out, and the twenty-four names then remaining form the panel from which the twelve jurors who are to serve in the case are taken.—3 Blackstone, 359.—27 & 28 Vic., c. 41, s. 9, § 9.

**369.** In the case of articles 363 and 364, neither party can strike out the names of more than six persons speaking the French language nor more than six persons speaking the English language, or the names of more than six traders or non-traders, as the case may be.—27 & 28 Vic., c. 41, s. 9, § 10.

**370.** If either of the parties fails to attend for the purpose of striking the panel, the prothonotary may strike twelve names from the special list on his behalf, observing the rules prescribed in the preceding article.—Lush's Practice, 447.—71 Rule of Practice.

**371.** [If the party who has demanded a trial by jury fails to proceed upon his demand, the opposite party may either adopt the necessary proceedings for summoning a jury or may obtain leave from the court or a judge to inscribe the case for proof in the manner indicated in the chapter on proof.]

§ 4. *Of the summoning of jurors.*

**372.** As soon as the panel is formed in the manner prescribed in the preceding section, the prothonotary delivers to the party who applies for it a writ of *Venire Facias*, in the name of the sovereign, signed by such prothonotary and sealed with the seal of the court, ordering the sheriff to summon the twenty-four persons whose names compose the panel; and a copy of such panel is annexed to the writ.—Lush's Practice, p. 173.—3 Blackstone, 358.

**373.** The jurors must be summoned at least four days before the day fixed for the trial.—C. S. L. C., c. 84, s. 44.—27 & 28 Vic., c. 41, s. 9, § 12.

**374.** The sheriff is not bound to leave a copy of the writ of *Venire Facias* with each person, but merely a notice under his signature, summoning him in virtue of such writ to appear upon the day and at the hour fixed for the trial.—This notice must give the names of the parties to the case, the names, occupation and residence of the person summoned as a juror, the day, place and hour fixed for the trial, the summons to appear as juror, the date of the writ of *Venire Facias*, the date of the notice, and the signature of the officer to whom the writ is addressed.

**375.** A return of service of such writ must be made in the

same manner as that of ordinary summonses.

§ 5. *Of the formation of the jury, and of challenges.*

**376.** On the day fixed for the trial, the persons summoned as jurors must appear at the appointed hour, at the place where the court is held, under a penalty not exceeding one hundred \* dollars, which may be immediately imposed by the court, and is levied by the sheriff on the goods and chattels of the person so fined; and in default of sufficient goods and chattels, such person may be imprisoned for a period not exceeding fifteen days.—The court may, however, for good reason shewn, reduce or entirely remit such penalty or imprisonment.—27 & 28 Vic., c. 41, s. 11, § 2.

**377.** As soon as the case is called on the appointed day, the writ of *Venire Facias* is returned, and after the jurors summoned have been called and a sufficient number to form a jury are in attendance, either party may challenge the array, either on the ground that the officer to whom the *Venire Facias* was addressed is interested or concerned in the suit, or on the ground of such causes of nullity as may be found in the summoning of the jurors or the making up of the lists or panel.—C. S. L. C., c.

\* Amended to this amount by 33 Vic., c. 13, s. 2., Q.

84, s. 45.—1 Archbold Practice, 204-7. — Kennedy, on Jury Trials, 101.—3 Blackstone, 359.—C. P. L., 497, 500, 501.

**378.** This challenge must be in writing, stating the causes of nullity relied upon, and must conclude by demanding that the panel be quashed.—Archbold, 207.

**379.** The presiding judge decides the challenge, and may, if necessary, order the facts upon which it is based to be substantiated on oath.—*Ibid*, 208.

**380.** If the challenge is pronounced to be valid, the party who applied for a trial by jury must obtain the issuing of another *Venire Facias*.

**381.** If there is no challenge to the array, or if such challenge is overruled, the prothonotary, in order to form the jury, proceeds to the calling and swearing of twelve of the persons summoned, following the order in which they appear on the panel, unless the judge orders otherwise, saving the cases mentioned in article 390.—C. S. L. C., c. 84, s. 43.

**382.** Either of the parties may challenge for cause any person called to form part of the jury, before such person is sworn.—3 Blackstone, 359.—C. P. L., 500.

**383.** The causes of challenge to the polls are either principal or to the favor.—Archbold, 205.—3 Blackstone, 361 *et seq.*—C. P. L., 502.

**384.** The causes of princi-

pal challenge are :

1. Want of qualification of the person summoned;—C. S. L. C., c. 84, s. 22.—Kennedy, 95.—Archbold, 202.

2. Relation or affinity with one of the parties, to the degree of cousin-german inclusively;—Archbold, 205-6.

3. Interest in the suit;—*Ibid*, 206.

4. That he has examined into the matter in dispute as an arbitrator named by one of the parties;—*Ibid*.

5. That one of the parties has wrought upon the juror and given him money or other things, in order to obtain a verdict in his favor;—*Ibid*.

6. That the juror is infamous, or attainted of felony or convicted of perjury.—Archbold & Kennedy, *loc. cit*.

**385.** Jurors may be challenged for causes of lesser importance, which indicate a probability or give rise to a suspicion that they are biased in favor of or against one of the parties, and such challenges are to the favor.—Archbold, 207.—Kennedy, 98.

**386.** Principal challenges are tried by the court; challenges to the favor are tried in the manner hereinafter explained.—Archbold, 207-8.

**387.** If two jurors or more have already been sworn, they try all challenges to the favor; if two have not been sworn, the court appoints two disinterested persons, who are sworn to try the challenge impartially, and who, together with the first juror sworn, if

one has been sworn, decide upon it, and upon any other challenges, until two jurors have been sworn.—Archbold, 208.—3 Blackstone, 363.

**388.** The juror himself may be examined on oath as to the matter of the challenge, provided it does not tend to his dishonor or discredit.—Archbold, 208.—3 Blackstone, 364.—C. P. L., 509.

**389.** A challenge founded upon a judicial condemnation must be accompanied with an authentic certificate of such condemnation.

**390.** In cases of a mercantile nature, the names of the merchants or traders summoned as jurors must be called first, and if they are not in sufficient number, the jury is completed from among the other persons summoned.—27 and 28 Vic., c. 41, s. 9, § 11.

**391.** If several of the jurors summoned are challenged or fail to attend, so that the number of twelve duly qualified jurors cannot be completed, the court or sitting judge may, upon consent of the parties, but not otherwise, order the sheriff or the officer acting in his stead, to make up the number by taking forthwith from among the persons present in court the requisite number of individuals qualified to serve as jurors; but the jury cannot be wholly composed of *tales*, and if all the jurors summoned fail to attend, or are lawfully challenged, the trial cannot then proceed.—C. S. L. C., c. 84, s. 46.—Arch-

bold, 190-1.—3 Blackstone, 365.—C. P. L., 513.—27 & 28 Vic., c. 41, s. 9, § 13.

**392.** When a juror called is not challenged, or the challenge is overruled, he must be sworn to try the matter at issue, and to give his verdict in a just and impartial manner, according to the evidence.—C. P. L., 514.

§ 6. *Of the proceedings before a jury.*

**393.** Two days at least before that fixed for the trial by jury each of the parties must, under a sealed cover, deliver to the prothonotary, for the use of the judge who is to preside at the trial, a *factum* or case, containing a statement of the facts of the case and the authorities which he cites in support of his pretensions.—72 R. of Practice.—Archbold, 190.

*The party making option of the trial by jury must, with his factum, file twenty-five printed copies of the assignment of facts for the jury.—Rule of Practice (Montreal), 29 April, 1871.*

**394.** After the return of the *Venire Facias*, on the day fixed for the trial, if neither party appears, the jurors are discharged; if the plaintiff appears and the defendant makes default, such default is recorded, and the plaintiff may proceed *ex parte*.—If the plaintiff alone fails to appear, his default is recorded, and judgment of nonsuit is entered

against him, with costs to the defendant.—73 R. of Prac.—1 Archbold, 189, 190.

**395.** The plaintiff may also, at any time before verdict, withdraw from court or abandon his suit, and a like judgment of nonsuit, with costs, is rendered against him by the judge.—74 R. of Prac.—1 Archbold, 197, 211, 212.

**396.** No paper can be read to the jury without leave from the judge; and if it be not authentic it must first be proved.

**397.** The witnesses give their evidence orally, in presence of the jury, and the judge is bound to make, or cause to be made under his supervision, full notes of the testimony thus adduced, of all oral admissions, and of all exceptions taken or objections made orally in court. These notes are read out by the judge or by the prothonotary, at the oral request of any party in the suit, during the trial or immediately after it, in order to correct and remedy any errors or omissions that may be found therein.—C. S. L. C., c. 83, ss. 34, 97.\*

**398.** A fair copy of such notes is made out by the prothonotary, and, after being certified by the judge, is filed of record, and in case of appeal is held to be the true record of

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\* The evidence of witnesses examined before a jury, may be taken down by means of stenography.—35 Vic., c. 6, s. 10, Q.—V. note to art. 283, ante.

the evidence adduced and of all other proceedings mentioned therein, and stands in lieu of any bill of exceptions by either of the parties against the evidence adduced, or the trial, which bills can no longer be filed.—*Ibid*, s. 35.

**399.** When the witnesses cannot attend before the court, their evidence may be taken by means of a commission for the examination of witnesses, which must be obtained and executed in the manner prescribed in the section concerning such commissions, and must be returned before the jury; but no such commission can issue for the examination of witnesses who are within the circuit in which the jury trial takes place, unless with the consent of both parties, which is entered in the record.—*Ibid*, ss. 105-6-7

**400.** When the facts to be proved before the jury have been assigned by the judge, the proof is limited to the facts thus submitted.—*Ibid*, s. 31.

**401.** When, upon the written consent of the parties, the assignment of facts by the judge has been dispensed with, proof may be gone into upon all the facts of the case.—*Ibid*, s. 32.

**402.** Either party may examine the other by interrogatories upon articulated facts, the answers to which are taken either orally in the presence of the jury, or in writing in the prothonotary's office.—*Ibid*, s. 100.

**403.** [The plaintiff first opens his case, and adduces

his evidence.—The defendant next proceeds with his defence, having the option of addressing the jury either before or after adduction of his evidence, —The plaintiff is afterwards entitled to reply, but if he adduces evidence in rebuttal, the defendant may comment upon such evidence before the reply of the plaintiff.] —1 Archbold, 191, 195.

**404.** When each party has stated his case and adduced his evidence, the judge, if he deems it necessary, sums up the evidence to the jury.—*Ibid*, 195. — 3 Blackstone, 375.

**405.** If either party objects to the judge's charge, the judge must, either immediately or as soon as he conveniently can, reduce to writing the portion of his charge which is objected to, mentioning the objection made, and what is thus written, after being signed by the judge, forms part of the record in the case.—C. S. L. C., c. 83, s. 33.

#### § 7. Of the provinces of judge and jury.

**406.** It is the province of the judge to declare whether there is any evidence and whether that evidence is legal, and it is that of the jury to say whether the evidence admitted is sufficient.—2 Powell, Practice of Law, Of Jury. Rule 1, p. 5.

**407.** The jury finds the facts, but must be guided by the directions of the judge



regards the law. — *Ibid*, Rule 2.\*

§ 8. *Of the verdict.*

**408.** If the jury, when charged with the case, cannot immediately agree upon a verdict, they must retire to a place set apart for them, in charge of some bailiff appointed by the court or judge, until they are ready to render their verdict.—The court or judge may, however, in such case, and also during the trial, permit them to depart for the night, subject to the obligation of attending again on the next following juridical day. — 1 Archbold, 197.

**409.** If the jurors fail so to attend again, they are liable to the penalties attached to contempt of court, without prejudice to the recourse of the parties against them for damages.

**410.** The jury may, at any time, even after the summing up by the judge, but in his presence and with his permission, in open court, examine again the witnesses already heard; they may also ask the opinion of the judge upon any questions of law which present themselves.—Kennedy, 49.

**411.** The agreement of nine of the twelve jurors is sufficient to return a verdict.—C. S. L. C., c. 83, s. 26, § 3.

\* Reasonable skill, due diligence and gross negligence are questions for the jury.

**412.** If nine of the jurors cannot agree upon the verdict to be returned, the jury may, in the discretion of the court, be discharged, and another jury may be summoned.

**413.** The prothonotary, after ascertaining that all the jurors are present, receives their verdict and enters the same in the registers of the court, inserting their names, and stating the number of those who concur in the verdict if it is not unanimous.—*Ibid*.

**414.** When there is an assignment of facts the verdict must be special and articulated upon each fact submitted, and be explicitly affirmative or negative.—*Ibid*, s. 31.—C. P. L., 519, 521.

**415.** When the parties have agreed to dispense with an assignment of facts, the verdict is general, either in favor of the plaintiff for a specific sum, or in favor of the defendant.—*Ibid*, s. 32.—C. P. L., 519, 522.

**416.** The jurors are not bound to render their verdict until the party demanding the trial by jury has paid the sum of one dollar for each of them, for each day that the trial has lasted.—In default of payment by either party, the jury are discharged without rendering a verdict, with costs against the party who demanded a trial by jury; such costs including both the costs incurred upon the trial and the allowance for the jurors, to whom the same is paid as soon as it is recovered by the prothonotary; [and if the trial by jury

was demanded by the defendant, the plaintiff may proceed according to article 371],—C. S. L. C., c. 84, s. 47.—27 & 28 Vic., c. 41., s. 10, §§ 3, 4.

**417.** The prothonotary, in the case of such default to pay, must immediately issue against the party liable for costs, a writ of execution, to be enforced by the sheriff, for the recovery of the allowance due the jurors.

**418.** The verdict must be given upon all the issues submitted to the jury.—1 Archbold, 213.—Buller, 178 a.

**419.** The verdict cannot in any manner pronounce upon the costs of suit.—C. P. L., 523.

**420.** The presiding judge may order the amendment of any clerical errors that have occurred in any proceeding in the case before the jury or in the verdict.—Buller, 321 a.—If the verdict cannot be rendered by reason of the death, illness or withdrawal of a juror, the jury must be discharged, saving the right of the parties to have another jury summoned.—The judge may, however, in the case of illness or withdrawal of a juror, adjourn the case, in order to give the jury the opportunity to reunite and render their verdict.

§ 9. *Of judgment after verdict and of remedies against a verdict.*

**421.** The party in whose favor a verdict has been rendered cannot move for judgment

upon the same until the expiration of four days in term after the rendering thereof.—75 R. of Prac.—Lush's Practice, 485.

**422.** The motion for judgment on the verdict can only be opposed by means of a motion for a new trial, a motion in arrest of judgment, or a motion for judgment *non obstante veredicto*.—14 & 15 Vic., c. 89, s. 4.—Lush's Practice, 485.—3 L. C. Jurist, p. 5, *Shaw vs. Mickleham*.

**423.** *Motions for new trial, or for judgment non obstante veredicto must be made before the Superior Court sitting in review, on or before the second day of the next term of such sittings, following the tenth day after the rendering of the verdict, and cannot be received after.*—34 Vic., (1871,) c. 6, s. 13.—Q. \*

**424.** Motions in arrest of judgment must be made within the same delay, unless the party has adopted either of the two other recourses mentioned in the preceding article, in which case it may be made within the two days in term next after the judgment upon the former motion.—77 Rule of Practice.

*The judges of the Superior*

\* This motion may be so made even though notice be only given the day previous, but if the other party complains of the want of notice delay will be given him before requiring him to argue.—*Ansell vs. The Bank of Toronto, Montreal*, 22 Feb., 1878.

*Court, at their sittings in review, shall also have exclusive original jurisdiction to hear and determine all motions for judgment upon a verdict, or for new trial, or for judgment non obstante veredicto, or in arrest of judgment, in cases in the Superior Court in the districts of Quebec and Montreal.*—34 Vic. (1870) c. 4, s 10, Q.

**425.** None of the motions hereinabove mentioned can be adjudicated upon unless the opposite party has been heard or duly notified.

*Of motions for new trial.*

**426.** The court may grant a new trial in the following cases :

1. If the assignment of facts submitted to the jury does not comprise all the facts necessary to be proved ;

2. If the judge has admitted illegal evidence ;

3. If he has rejected legal evidence ;

4. If he has wrongly directed the jury upon a point of law ;

5. If the jury, not agreeing, have settled their verdict by casting lots, even though it be conformable to the evidence and to the direction of the judge ;

6. If the jurors have accepted refreshments from the successful party ;

7. If one of the jurors had expressed his intention of favoring the successful party ;

8. If he has committed any act of a nature to warrant any suspicion of partiality of the verdict ;

9. If anything has been done to bias the opinion of a juror in favor of the successful party ;

10. If the judge, while summing up the case in favor of one of the parties, was stopped by the jury declaring themselves satisfied, and they afterwards rendered a verdict in favor of the other party ;

11. If the amount awarded be so small or so excessive that it is evident that the jurors must have been influenced by improper motives, or led into error ;

12. If the jurors, or any of them, have received affidavits or evidence out of court ;

13. If the verdict is unsupported by proof, or contrary to the evidence adduced ;

14. If the party was taken by surprise ;

15. If the case was irregularly called in the absence of either of the parties ; or if the record was not complete ; if an important witness was absent at the time of the trial without any fault on the part of the party who had summoned him and his evidence is still obtainable ; and in all cases where the merits of the case could not be discussed, and the party aggrieved and his attorneys are free from blame in that respect ;

16. In some particular cases when new evidence has been discovered since the trial ;

17. If the verdict is informal or defective ;

18. If the writ of *Venire Facias* is wrongly addressed or executed, or if a challenge of

the array or of any juror has been erroneously maintained or overruled;

19. If, for other causes, there is manifest injustice in the verdict.—Lush's Practice, 531 *et seq.*, 543, 550.

**427.** The causes mentioned in paragraphs 2, 3, 4 and 10, in the preceding article can only be ascertained by means of the judge's notes filed in the record, and when the party has caused his objections to be entered therein.—Lush's Practice, 540—3 Blackstone, 391.—Buller, 325 c.—C. S. L. C., c. 83, s. 34.

**428.** The affidavit of a juror as to the reasons and motives which influenced him cannot be received in any case.—Lush's Practice, 536.

**429.** Nor can the affidavits of jurors or any other evidence be received for the purpose of establishing that the verdict rendered and recorded is not that which the jurors intended to give.—*Ibid.*

**430.** A new trial must be granted when the judgment upon the verdict has been reversed by a higher court.—11 L. C. Reports, 325, The Montreal Assurance Co. *vs.* McGillivray.

#### *Of arrest of judgment.*

**431.** The defendant has a right to move in arrest of judgment upon the verdict, whenever it appears on the face of the record that, notwithstanding the verdict, the plaintiff has no right to recover any sum, or that the verdict differs

materially from the issues joined, or that the judgment would be reversed in appeal.—Lush's Prac., 527.—3 Blackstone, 393.

**432.** Arrest of judgment has the effect of annulling the verdict of the jury, which can no longer be carried out.

#### *Of judgment non obstante verdicto.*

**433.** [Whenever the verdict of a jury is upon matters of fact in accordance with the allegations of one of the parties, the court may, notwithstanding such verdict, render judgment in favor of the other party if the allegations of the former party are not sufficient in law to sustain his pretensions.]—Lush's Prac., 529.—C. S. L. C., c. 83, s. 31.

## CHAPTER SEVENTH.

### OF DIVERS OTHER INCIDENTAL PROCEEDINGS.

#### SECTION I.

#### *Of Continuance of Suits.*

**434.** When a case is ready for judgment, it cannot be retarded either by change of the civil status of the parties or by loss of the quality in which they were acting.—1 Pigeau, 339.—C. P. C., 342.

**435.** The case is ready for judgment, when the trial is completed, and the case is under advisement.

**436.** The attorney who is aware of the death or change of civil status of his party, or of the loss of the quality under which he was acting, is bound to notify the opposite party; and all proceedings had up to the day when such notice is given are valid.—Ord. 1667, tit. 26, art. 3.—1 Pigeau, 344-5.

**437.** In cases which are not ready for judgment, all proceedings had subsequently to notice given of the death or change of status of one of the parties, or of the loss of the quality in which he was acting, are null; and the suit is suspended until its continuance by those interested, or until the latter have been called in to continue it.—1 Pigeau, 339 *et seq.*—C. P. C., 344-5.

**438.** A suit may be continued:

1. By the heirs or representatives of a deceased party;

2. By a minor who has attained full age;

3. By the husband who has married a spinster or a widow party in the suit;

4. By a wife who has obtained separation of property from her husband, when the suit affects her private property;

5. By the person who replaces the party who has lost the quality in which he was acting.—1 Pigeau, 340.

**439.** The continuance may be effected upon petition, filed in the prothonotary's office, after

being served upon the opposite party.—This petition may be contested in the same manner as any suit.—1 Pigeau, 345.

**440.** If the continuance is not contested within the delays prescribed, it is held to be admitted, and in such case, as also when it is declared by the court to be well founded, the opposite party may continue on from the last proceedings originally taken.—*Ibid*, 3s8.

**441.** If the persons interested do not continue the suit, the party remaining in it may compel them to do so by a demand in the usual form which is joined to the original suit.—1 Pigeau, 347.

**442.** In all cases, whether the continuance is voluntary or ordered by the court, it is effected by following up the last valid proceedings originally had in the suit.—*Ibid*, 348.

## SECTION II.

### *Of the Decisory Oath and the Oath put by the Court.*

#### § 1. *Of the decisory oath.*

**443.** A party whose case is not proved may refer its decision to the oath of the opposite party, either upon the whole or upon a distinct portion of the matter in dispute.\*—1 Pigeau, 256.

\* The decisory oath cannot be withdrawn when the party to whom it has been deferred accepts the reference, and declares himself ready to answer.—*O'Farrell vs. O'Neil*, 17 L. C. Rep., 80.

**444.** The decisory oath cannot be offered by an attorney, without a special power from the party he represents.—The offer must be in writing, and the party obtains, of course, a rule ordering the opposite party to appear before the judge to answer the questions which will be put to him.—Potlier, *Oblig.*, 914.

**445.** This rule is served with the same delays as those required in summoning witnesses.

**446.** If the party served fails to appear or refuses to answer, he is held to admit whatever the opposite party seeks to prove by offering the oath.—*Ibid.*, 915.—If the party to whom the oath is offered or referred is a corporation, the answers must be given in the manner provided in article 224 with regard to interrogatories upon articulated facts.

**447.** The party served may, however, when he refuses to answer, refer the oath back to the opposite party. This is done in writing, and thereupon the party who offered the oath is bound to attend before the court, without further notice.—*Ibid.*, *ead. loc.*

§ 2. *Of the oath put by the court.*

**448.** The court may, of its own motion, order either of the parties, or both, to appear and answer such questions as it deems necessary to elucidate the matters in dispute; according to the provisions contained

in article 1254 of the Civil Code\*.—1 Pigeau, 259, 260.

**449.** The court may order that the party shall appear without notice, or that the rule shall be served upon him at the diligence of the opposite party.

SECTION III.

*Of Discontinuance.*

**450.** A party may, at any time before judgment, discontinue his suit or proceeding on payment of costs.—C. S. L. C., c. 82, s. 25.—C. P. C., 402, 403.

**451.** Discontinuance may be effected by a simple declaration to that effect, signed by the party or his attorney, and delivered into court or filed in the prothonotary's office. It has no effect, however, against the opposite party unless it has been served upon him.—*Ibid.*

**452.** Discontinuance replaces matters as of course in the state in which they would have been, had the suit or proceeding not been commenced.—C. P. C., 403.

**453.** A party who has effected a discontinuance cannot begin again unless he previously pays the costs incurred by the opposite party upon the

\* This oath may be submitted by the court of Queen's Bench (appeal side) as well as by a court of original jurisdiction.—Ferrier & Dillon, 12 L. C. Jurist, 202.

suit or proceeding discontinued.—C. S. L. C., c. 82, s. 25.

#### SECTION IV.

##### *Of Peremption of Suits.*

**454.** Suits are perempted when no proceeding has been had therein during three years.—1 Couchot, 75.—Ord. de fév. 1563, art. 15.—Ord. de janv. 1628, art. 91.—C. P. C., 397.

**455.** Peremption, however, does not take place :

1. When the party has ceased to be represented by his attorney, in the cases mentioned in articles 201 and 202 ;

2. When the party himself dies, or has changed his civil status ;

3. When proceedings are compulsorily stayed by any incidental proceeding or by an interlocutory judgment.—1 Couchot, 75.—9 L. C. Rep., 219.

**456.** Peremption takes place against corporations and against all individuals, even against minors, when they are represented, saving their recourse against those who represent them. It does not take place against the crown.—3 Anc. Den., p. 662.—C. P. C., 398.

**457.** Peremption must be declared by the court, upon a motion of which the attorney, if there is one, has had notice ; otherwise the notice must be given to the party himself.—C. P. C., 480. \*

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\* A defendant who has never appeared may ask for peremption and sign the motion there-

**458.** Peremption is covered by any useful proceeding taken after the lapse of three years and before the service of the motion to have it declared ; but it cannot be prevented or affected by any proceeding taken subsequently to the service of such motion.—10 L. C. Reports, 20.—3 L. C. Jurist, 237.—C. P. C. 399.

**459.** Peremption does not extinguish the right of action, but only the suit or proceeding.—C. P. C., 401.

**460.** The court, in declaring the peremption of the suit, may, according to circumstances, condemn the plaintiff to pay all costs.—11 L. C. Reports, 494.—10 Do. 382.—8 Do. 454.—1 L. C. Jurist 264.

#### SECTION V.

##### *Miscellaneous Provisions.*

**461.** When any writ or paper whatever requires to be served out of the district, the service may, in the absence of any provision to the contrary, be made either by a bailiff of the district in which the court is held, or by a bailiff of the

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for himself. Day *vs.* Decouse, 12 L. C. Jurist, 265.—A motion for peremption made by a defendant in person, who has ceased to be represented by his attorney *ad litem*, and who has not subsequently appeared by a new attorney or in person, is irregular, null, and void. Johnson *vs.* Rimmer, 13 L. C. Jurist, 131.

district in which such service is to be made; but no more costs can be allowed in the former case than in the latter; and this provision applies also to executions against moveable property and to attachments before or after judgment.\*—C. S. L. C., c. 83, s. 65, §§ 1, 2, 3, 4.

**462.** Every written proceeding in the case must be served upon the opposite party, otherwise it is not deemed to be regularly fyled. — Every notice of inscription for hearing in law or upon the merits must be given by serving a copy of the inscription at least one clear day in term, and four days in vacation, before the day fixed for such hearing.—*Ibid.*, s. 184.

**463.** In reckoning the delays in matters of pleading or trial, the first day of September is deemed to be the next day after the ninth day of July; and no party to a cause can be obliged to proceed between those two days, without a special order of the court or judge.

*Notwithstanding article 463 of the said code, any days between the ninth of July and the first of September shall be reckoned in the delays of eight days fixed by articles 497 and 500 of the said code.* 34 Vic., (1870) c. 4, s. 4, Q.

**464.** Two or more judges of the superior court discharging their duties in the same district may, and shall whenever

*the despatch of business requires it, sit at the same time and at the same place, in separate apartments, in term or in vacation; and each of such judges has jurisdiction for hearing and determining all cases and matters submitting to him, and has the same powers as if he were the only judge sitting in such place.*—40 Vic., (1876), c. 13, s. 2, Q.

**465.** In the absence of the judge from the chief-place of any district in vacation, his duties may be performed by the prothonotary, in cases of evident necessity, or where by delay a right might otherwise be lost or a wrong sustained.—But no judgment or order can be made by the prothonotary unless notice of the application has been given to the opposite party, except in cases by default, and such order may be afterwards revised by the court at its next sitting, or by any judge present in the district, provided the party requiring the revision files in the prothonotary's office, on or before the third following juridical day, an exception thereto accompanied by the grounds upon which such revision is demanded.—The judgment or order of the prothonotary cannot be executed until the delay for filing such exception has expired; and after the filing of the exception the execution of such judgment or order remains suspended until the decision of the judge.

—*Ibid.*, s. 25. *The prothonotary cannot exercise these functions when the judge has his domicile*

\* This service may be made by the sheriff.—33 Vic., c. 17, s. 1, Q.



at the *chef-lieu* of the district, unless such judge be ill or absent from the district.—36 Vic. (1872), c. 10, s. 7, Q.—40 Vic. (1876), c. 13, s. 5, Q.

**466.** Whenever the sheriff is interested or personally concerned in any suit or action, any writ which ought to be served by him must be addressed to and served by the coroner of the district.—*Ibid*, c. 83, s. 45.

**467.** If the sheriff is also coroner, then the prothonotary, or his deputy, acts in the place and stead of the sheriff, as if the writ had been addressed to him personally.—C. S. L. C., c. 78, s. 22.

## CHAPTER EIGHTH.

### OF FINAL JUDGMENT.

#### SECTION I.

##### *Of Judgment on the Merits.*

**468.** Judgment in a suit which is under advisement cannot be stayed by reason of the death of the parties or of their attorneys.—Ord. 1867, tit. 26, art. 1.—[If any judge or assistant judge before whom a case has been heard is appointed chief-justice or judge of the same court, or chief-justice or judge of another court, or has obtained leave of absence, he may render judgment as if no changes had taken place.]

“Whenever any judge of the superior court, who has heard a cause in the said court, is unable, by reason of sickness or other reason, to render judgment in the said cause in person, he may transmit the draft of the

judgment, certified by himself, to the prothonotary, who shall be thereupon bound to record the same, and to read it in open court on the next juridical day in term after he shall have received such draft; and the judgment shall then have the same force and effect as if it had been pronounced by the judge on the day on which it was so read.”—32 Vic., c. 20, s. 1, Q.

At any time when a judge who has heard a cause in the superior court or in the circuit court is incapable on account of illness, absence or other cause, of rendering judgment in person, he may transmit the draft of the judgment certified by him, to the prothonotary or to the clerk, as the case may be, with instruction to enregister such judgment and to read it, or to give communication of it on demand to the parties or their attorneys *ad litem*, on the day previously fixed for that purpose by the court which shall have taken the cause on advisement.

The prothonotary or the clerk, on receiving the draft of judgment and the instructions accompanying it, is obliged to conform to such instructions; and the judgment so enregistered shall have the same effect as if it had been rendered by the judge, during the sitting of the court.

The provisions of the preceding section, shall take effect notwithstanding article 1080 of the code of civil procedure, section 1 of the act of this Province, 32 Vic., c. 20, and any

*other provision of the law, and without prejudice to such article, section, or provision of law.*

*In the absence of the judge who should preside over the superior or the circuit court, the prothonotary or clerk as the case may be, may adjourn the court from day to day during the term.*—38 Vic., c. 10, ss. 1, 2, 3, Q.

**469.** In all contested cases, and in those not provided for by articles 89, 90, 91, 92 and 96, judgment must be rendered in open court.—*Ibid.*, art. 5.—The court may, during term, appoint days out of term for rendering judgment in cases taken under advisement.

**470** In cases inscribed at the same time for proof and hearing, judgment may be rendered during the days set apart in vacation for proof and hearing in such cases.—C. S. L. C., c. 83, s. 37.—*And also during term, and on any day out of term appointed by the court for rendering judgment in cases taken under advisement.*—32 Vict., c. 20, s. 2, Q.

**471.** Every judgment for damages must contain a liquidation thereof.—Ord. 1667, tit. 26, art. 6.—C. P. C., 128.

**472.** Every judgment must mention the cause of action, and must be susceptible of execution.—In contested cases it must moreover contain a summary statement of the issues of law and of fact raised and decided, the reasons upon which the decision is founded, and the name of the judge by whom it was rendered.—C. S. L. C., c. 83, ss. 39, 110.

**473.** The judgment must

be entered without delay in the register of the court, in conformity with the draft paraphed by the judge.\*

**474.** In the case of difference between the draft and the entry thereof in the register, the draft is to be followed and the court may, without any formality, order the rectification of the register.

**475.** Every judgment condemning a party to the restitution of rents, issues and profits, must order the liquidation thereof; and this is done by experts if the case requires it; and the party condemned is bound for that purpose to produce all accounts and documents shewing the receipts, all leases of immoveables, and a statement of the cost of tilling, sowing and harvesting incurred by him.—Ord. 1667, tit. 30, arts. 1, 2, 3.—C. P. C., 129.

**476.** Unless it is expressly ordered, it is not necessary to have the judgment served on the party condemned, except judgments in recognition of hypothecs, rendered against defendants having a known domicile in the province.—C. S. L. C., c. 49, s. 15; c. 83, s. 114.—Ord. 1667, tit. 27, art. 1.—25 Geo. III, c. 2, s. 29.

**477.** [Any party may, on giving notice to the opposite

\* Improbation cannot be made against a judgment, or a copy of a judgment, even if it has been altered after it was pronounced.—*Healy vs. The Mayor, &c., of Montreal*, 17, L. C. Rep., 409. See also *Carter vs. Molson*, 1 Q. L. J., P.

party, renounce either a part only or the whole of any judgment rendered in his favor, and have such renunciation recorded by the prothonotary; and in the latter case the cause is placed in the same state it was in before the judgment.]

## SECTION II.

### *Of Costs.*

**478.** The losing party must pay all costs, unless for special reasons the court thinks proper to reduce them or compensate them, or orders otherwise. —Nevertheless, in actions of damages for personal wrongs, if the damages awarded do not exceed forty shillings sterling, no greater sum can be allowed for costs than the amount of such damages. —Ord. 1667, tit 31, art. 1.—25 Geo. III., c. 2. s. 4.—C. S. L. C., c. 82, s. 23.—C. P. C., 130, 131.

**479.** Costs are taxed by the prothonotary upon production of a bill thereof, and according to the tariffs in force, and if the amount awarded by the judgment is such that it might have been recovered before an inferior court, the plaintiff is entitled to such costs only as would have been allowed in such inferior court, unless the court otherwise orders; such taxation, may, within six months, be submitted for the revision of a judge after the adverse party has received such notice as the judge may deem sufficient.—Neither the application for revision, however, nor the delay allowed for such revision, can *suspend the execution of the*

judgment; saving the debtor's recourse in the event of the amount being levied or paid before such revision.—C. S. L. C., c. 82, s. 2; c. 83, ss. 161, 162.

**480.** Whenever witnesses are summoned from beyond the jurisdiction, their expenses cannot be taxed, against the opposite party, for more than it would have cost to examine them by means of a commission unless the court or a judge otherwise orders.—C. S. L. C., c. 79, s. 11.

**481.** In the cases of articles 69 and 246, no greater costs of service can be allowed than if such service had been made by a bailiff residing in the county.—C. S. L. C., c. 83, s. 63, § 5; s. 65.

**482.** Attorneys *ad lites* may demand and obtain distraction of their fees and of all disbursements actually made by them.\*—1 Pigeau, 420-1, C. P. C., 133.

If such demand be not made on or before the day on which the judgment was rendered it can only be granted after the opposite party has been notified to show cause against it. †

\* An attorney conducting his own case is entitled to the ordinary fees.—Gugy *vs.* Brown, 17 L. C. Reports, 33.

† Whether an attorney can proceed with a case for his costs after it has been settled between the parties, is still a moot question, though the tendency of the later decisions is against the right. Lafaille *vs.* Lafaille, 14 L. C. J. 262. Castonguë *vs.* Perrin *et al.*, 14 L. C. J. 304.

## TITLE SECOND.

## OF REMEDIES AGAINST JUDGMENTS.

## CHAPTER FIRST.

## OF REVISION.

## SECTION I.

*Of the Revision of Judgments  
by Default.*

**483.** The defendant may apply by petition, within a year and a day, for the revision of any judgment rendered against him by default, in the following cases :

1. In all cases of simple attachment, or attachment by garnishment, when the service has been effected under the provisions of article 68.

2. Whenever he has not been served personally or at his real domicile, or ordinary and actual place of residence.—C.S.L.C., c. 83, ss. 111, 112.

**484.** The defendant may seek relief against any judgment rendered in conformity to the provisions of articles 89, 90, 91 or 92, by means of an opposition, made either before or after seizure, but before sale, or within ten days from the date of a return of *nulla bona*, if there is one, or within ten days from the service upon him of any seizure by garnishment, issued in virtue of such judgment.—*Ibid.*, ss. 115, 116, —23 Vic., c. 57, ss. 43, 46.

**485.** The petition for revision mentioned in article 483, and the opposition mentioned in article 484, must contain, on pain of nullity, all grounds, whether in support of such petition or opposition, or against the judgment, with an election of a domicile within one mile from the place where the court is held, and be accompanied by all documents in support of it.—C. S. L. C., c. 83, s. 116.

**486.** The petition or opposition must, moreover, be accompanied with an affidavit of the defendant, or of one of the defendants, or of some other credible person, that the allegations contained in such petition or opposition are, to his knowledge, true \*; and, in

\* Form No. 33.—*Affidavit of an opposant or of some other person.*

Canada, Province of Quebec, }  
District (or Circuit) of— }

In the Superior (or  
Circuit) Court.

A. B., Plaintiff, vs. C. D., Defendant, & G. H., Opposant.

G. H., of—, the opposant, (or one of the opposants in this cause), (or other person, as the case may be) being duly sworn doth depose and say, that the facts articulated and set forth

the case of article 484, a sufficient sum must be deposited with the prothonotary to meet the costs incurred after the return of the writ up to the judgment, including the service thereof; which costs must be paid to the plaintiff as soon as they are taxed, out of the sum so deposited.—*Ibid*, s. 117.

**487.** The opposition mentioned in article 484 is filed in the prothonotary's office; but the prothonotary must not receive it unless a copy thereof is at the same time left for the plaintiff.—*Ibid*, s. 118.

**488.** The filing of such opposition has the effect of suspending the sale under the seizure until it is decided by the court. The prothonotary must grant a certificate in duplicate of the filing of the opposition mentioned in the

in the annexed opposition, and each and every of them, is and are true: and that the said opposition is not made with any intent unjustly to retard or delay the execution of the judgment recorded in this cause, but that the same is made in good faith for the sole purpose of obtaining justice, and the said deponent hath signed (or hath declared himself unable to sign, being thereunto duly required).

Signature, G. H.

Sworn before me, at—, this  
—day of—, 18—.

J. P.

(Signature of the judge, prothonotary, clerk or commissioner.)

preceding article; and one of the duplicates must be given to the officer making the seizure, who must give a receipt therefor, in default of which it is served upon him at his own cost. The officer is thereupon bound to stay his proceedings, and to return into court the writ of execution and the certificate which he has received.—*Ibid*, s. 115, § 3.

**489.** If the opposition is filed before the issuing of a writ of execution, notice of the filing thereof must be given to the plaintiff, and the delays for contesting the same are computed from the date of the service of such notice.—*Ibid* s. 116.

**490.** The petition for revision, and the opposition, are held to form part of the proceedings upon the original suit, and to be a defence to the action, and, as such, are subject to the provisions concerning the contestation of ordinary suits.—*Ibid*, ss. 116, § 3, 119, 120.

**491.** If the opposition is maintained, in whole or in part, the costs incurred upon the execution are borne by the plaintiff.—*Ibid*, s. 123.

**492.** If the opposition is maintained by reason of any irregularity in the proceedings of the plaintiff, the court, in maintaining the opposition with costs may condemn him to such further costs as it may think fit, but not exceeding in amount the sum deposited by the defendant.—*Ibid*, s. 124.

**493.** If no opposition is made to a judgment rendered in vacation, the allegations of

the declaration are held to be admitted and proved.—*Ibid*, 122.

## SECTION II.

### *Of Review before Three Judges.*

**494.** *A review may be had:—*

1. *Upon every final judgment from which an appeal lies ;*

2. *Upon every judgment or order rendered by a judge in summary matters, under the provisions contained in the third part of this code.*

3. *Upon any judgment rendered on any petition or motion to set aside or quash an attachment before judgment or capias ad respondendum.*—34 Vic. (1870) c. 4, s. 5, Q.

**495.** *This revision takes place before three judges of the superior court, and the judge who has rendered the judgment complained of cannot sit at the same time.*—36 Vic., (1872) c. 10, s. 8, Q.

**496.** The review of judgments rendered in the districts of Montreal, Ottawa, Terrebonne, Joliette, Richelieu, St. Francis, Bedford, St. Hyacinthe, Iberville and Beauharnois, takes place at the city of Montreal: that of judgments rendered in the districts of Quebec, Three Rivers, Saguenay, Chicoutimi, Gaspé, Rimouski, Kamouraska, Montmagny, Beauce and Arthabaska, at the city of Quebec.—*Ibid*, . 26.

**497.** This review cannot be obtained until the party demanding it has deposited, in the office of the prothonotary of the court which rendered

the judgment, and within eight days \* from the date of such judgment, a sum of twenty dollars, if the amount of the suit does not exceed four hundred dollars; or of forty dollars, if the amount of the suit exceeds four hundred dollars, or if it be a real action; together with an additional sum of three dollars for making up and transmitting the record, when the judgment has been rendered elsewhere than in the cities of Quebec and of Montreal. †.—The amount thus deposited is intended to pay the costs of the review incurred by the opposite party, if the court should grant them, if not, it is returned to the party by whom it was deposited.—*Ibid*, s. 21.

**498.** As soon as the necessary deposit has been made, and not before, the party may file, in the same office, an inscription for review, notice of which must be given to the opposite party, and the prothonotary is then bound to

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\* This delay runs during long vacation.—See amendment to art. 463, *ante*.

† An inscription for review and deposit made on the eighth day after a judgment is sufficient, though notice thereof be only given on the following day. *Jacques vs. Lussier*, 12 L. C. Jurist, 215.

This deposit cannot be omitted even by consent of parties, the statute being imperative on the point. *Loiselle vs. Loiselle*, 2 L. C. L. J., p. 37.

transmit the record, without delay, together with a copy of the judgments and orders rendered in the case, to the prothonotary of the superior court at the place where the case is to be heard, if it is not there already.—*Ibid.*, ss. 21, 23.

**499.** The deposit and inscription have the effect of staying the execution of the judgment and the appeal.—*Ibid.*, s. 22.

**500.** The inscription need not be for any particular day, but the case must be heard, in its order, on the day interm next after the expiration of a delay of eight days, from the day on which the notice of inscription was filed in the office of the prothonotary of the court in which the judgment was rendered.—The court may appoint special days for such review.—*Ibid.*, ss. 20, 24.\*

**501.** The prothonotary to whom the record is transmitted is bound, as soon as he has received it, to set down the case on the roll for hearing, and if the case be pending in the superior court at Quebec or Montreal, he is bound to place it on the roll as soon as the inscription and notice are filed.—*Ibid.*, s. 23.

**502.** The judgment in review may be rendered in term or in vacation, by all the judges who heard the case, or

by a majority of them; and the judges may confirm, reverse or alter the original judgment, as the case may require; and their decision, together with the record, must be sent back to the court in which the case was first decided, to be there registered as being the judgment in the suit, at the same place, in the same manner, and with the same effect, as if it had been rendered on the day upon which it was received by the prothonotary.—*Ibid.*, s. 25.

[Whenever any cause has been heard in review by three judges, and at the least 'one of the judges who heard the same is present in court and ready to render an interlocutory or final judgment therein, then, if any judge who heard the cause, and would be competent to sit in judgment therein, be absent by reason of his appointment to another court, of sickness, or any other cause, but has addressed a letter to the prothonotary of the court, containing his decision in the case and signed by him, or has, in testimony of his concurrence therein, signed a judgment to be delivered, and delivered by a judge so present; such judge is deemed to be present for the purpose of such judgment, and the decision so transmitted and signed by him has the same effect as if delivered or concurred in by him in open court.]

**503.** [No change in the personal composition of the court, by the appointment of any assistant judge as puisne

\* The eight days mentioned in this article run during the long vacation.—34 Vic., c. 4, s. 4, Q. See amendment to article 463 ante.

judge, or the appointment of a puisne judge as chief-justice, or by the resignation, death, or appointment to another court of any chief-justice or of a puisne judge, or of an assistant judge, can have alone the effect of rendering a rehearing of any case necessary, if a sufficient number of judges who heard the case remain to render a judgment, either interlocutory or final].

**504.** [If a judge or an assistant judge, who has heard a case, together with other judges, is removed to another court, or is appointed chief-justice or a judge of the same court, or of another court, or obtains leave of absence, he may render judgment, whether interlocutory or final, together with the other judges, as if no such change had taken place.]

*No person who shall have inscribed in review before three judges any cause in the circuit court, susceptible of appeal to the court of queen's bench, or any cause in the superior court, and shall on such inscription have proceeded to judgment, shall be entitled to appeal to the court of queen's bench, from the judgment of the superior court sitting in review, if such judgment confirms that rendered in the first instance.*

*Causes adjudicated upon, in review, which are susceptible of appeal to her majesty in her privy council, but the appeal whereof to the court of queen's bench is taken away by this act, may nevertheless be appealed to her majesty, by observing the same formalities and provisions,*

*and subject to the same conditions, as in the case of judgments rendered by the court of queen's bench (appeal side), and with the same effect, as if every provision of law, in relation to appeals to her majesty from judgments of the court of queen's bench, was anew enacted with respect to the superior court sitting in review, its officers or their office.—37 Vic., (1873-4.) c. 6, ss. 1, 2, Q.*

## CHAPTER SECOND.

### OF PETITIONS IN REVOCATION OF JUDGMENT.

**505.** Judgments which are not susceptible of being appealed from or opposed, as hereinabove provided, may be revoked, upon a petition presented to the same court, by any person who was a party to or was summoned to be a party to the suit, in the following cases :

1. Where fraud or artifice has been made use of by the opposite party ;

2. When they have been rendered upon documents which have been only subsequently discovered to be false, or upon any unauthorized tender or consent disavowed after judgment ;

3. When, since they were rendered documents of a conclusive nature have been discovered which had been withheld or concealed by the opposite party.—Ord. 1667, tit. 35, art. 34.—Pothier, Pro. civ. 153.—C. S. L. C., c. 83, s. 86, § 3.—C. N., 2057.—C. P. C., 480.



**506.** It can be received only during the six months after the discovery of the fraud or the falsity, or of the documents withheld, and in all other cases only during the six months after the judgment, or a notice thereof has been served.—Ord. 1667, tit. 35, arts. 16, 5, 18.

**507.** Petitions for revocation of judgment cannot prevent or stay execution, [unless an order to suspend is granted by the court or judge.]

**508.** The attorney who acted for a party in the cause or suit may also represent him upon the petition in revocation of judgment, without a new power being required.—Ord. 1667, tit. 35, art. 6.

**509.** If there are sufficient grounds for a petition in revocation of judgment, the court may replace the parties in the same position as they were in before the judgment, and the proceedings are the same as in ordinary suits. The court may also give judgment at the same time upon the petition and upon the merits of the original suit. In all cases it adjudicates upon the costs of the first judgment, according to circumstances.—Ord. 1667, tit. 35, art. 33.—Décl. de Mars, 1685.

### CHAPTER THIRD.

#### OF OPPOSITIONS BY THIRD PARTIES.

**510.** Any person whose interests are affected by a

judgment rendered in a case in which neither he nor persons representing him were made parties, may file an opposition to such judgment.—Décl. 22 avril 1732, art. 5.—Code, Donations, art. 213a.—Pothier Pr. civ., 126.—Ord. 1667, tit. 35, art. 2.—C. P. C., 474.

**511.** This opposition is formed by means of a petition to the court, which must contain an election of domicile on pain of nullity, the grounds of opposition, and proper conclusions, and must be served upon the parties in the cause, or upon the attorneys who represented them, if it is made within a year and a day after the judgment.—Pothier, *cod. loc.*—C. P. C., 475.

*The opposition must, moreover, on pain of nullity, be accompanied by an affidavit of the opposant, or of some other credible person, that the allegations contained in such opposition are, to the best of his knowledge, true.*—35 Vic., (1871), c. 6, s. 14, Q.

**512.** The proceedings upon oppositions by third parties are the same as upon ordinary suits.

### CHAPTER FOURTH.

#### OF APPEALS.

**513.** An appeal from all judgments rendered by the superior court lies to the court of queen's bench, as hereinafter provided in the fourth book.

## TITLE THIRD.

### OF THE EXECUTION OF JUDGMENTS.

#### CHAPTER FIRST.

##### OF THE VOLUNTARY EXECUTION OF JUDGMENTS.

#### SECTION I.

##### *Of Putting in Security.*

**514.** Every judgment ordering security to be given must fix the time within which sureties shall be offered.—C. P. C., 517.

**515.** Sureties are offered after notice served upon the opposite party, and, when not objected to, they enter into a bond at the prothonotary's office.—Ord. 1667, tit. 28, art. 2.—Pothier, Proc. civ., 147.—C. P. C., 518.

**516.** Except in cases where the law requires only personal justification, if a surety is objected to, he may be required to give in a declaration of his real property, together with his titles thereto. Sureties may in all cases, be required to justify on oath their sufficiency, and the judge or prothonotary may receive and administer the necessary oath.—Ord. 1667, tit. 28, art. 3.—C. P. C., 518.

**517.** A surety may be objected to :

1. If he has not the qualifications required according to the title *Of Suretyship* in the

Civil Code.—C. C., arts. 1929, *et seq.*

2. If he is not sufficient.—Pot. Proc. civ., 148.

**518.** The sufficiency of a surety is decided upon the documents and affidavits produced, without a proof being ordered.—Ord. 1667, tit. 28, art. 3.—Pot., Proc. civ., 148.—C. P. C., 521.

**519.** If the surety is accepted, the bond is drawn up and entered into in conformity with the judgment, and remains in the prothonotary's office as part of the record in the case.—Ord. 1667, tit. 28, art. 4.—C. P. C., 522.

**520.** The acceptance of sureties is decided upon summarily, without any petition or writings, and the bond is entered into notwithstanding oppositions or appeals, and without prejudice thereto.\*—Ord. 1667, tit. 28, art. 3.—Pot., Proc. civ., 148.—C. P. C., 521.

#### SECTION II.

##### *Of Accounting.*

**521.** Every judgment ordering an account must fix a delay for rendering it.—Ord.

\* One surety is sufficient unless two specially required.—31 Vic., (1868), c. 7, s. 2, § 24, Q.

1667, tit. 28, art. 8.—Pot., Proc. civ., 89.—C. P. C., 530.

**522.** The account must be rendered nominately to the party entitled to it; it must be sworn to and be filed in the prothonotary's office within the delay fixed, together with the vouchers in support thereof.—Ord. 1667, tit. 29 art. 8.—Pothier, *loc. cit.*—C. P. C., 534.—The court may, however, upon motion, of which notice has been duly given, extend the delay for rendering the account.—Pot., Proc. civ. 89.

**523.** The account must contain, under separate heads, the receipts and expenditure, and close with a recapitulation of such receipts and expenditure, establishing the balance; whatever remains to be recovered being reserved for a separate head.—Ord. 1667, tit. 29, art. 7.—C. P. C., 533.

**524.** Under the head of receipts must be placed all sums which the accounting party has received, and all those that he ought to have received during his management.—Pothier, Proc. civ., 90.

**525.** The accounting party cannot place under the head of expenditure the costs of the judgment ordering him to account, unless he is authorized to do so by the court; but he may charge under that head his travelling expenses, the attendances of the attorney who made up the account, the cost of presenting and verifying it, and of whatever copies thereof are required.—Ord. 1667, tit. 29, art. 18.—C. P. C., 532.

**526.** If the account shows an excess of receipts over expenditure, the party to whom it is rendered may provisionally demand execution for the balance, saving his right to contest the remainder of the account.—David *vs.* Hayes, Montreal, 29 July, 1846, in appeal, 10 Nov., 1847.—C.P.C., 535.

**527.** Parties accounted to are bound to take communication of the account and vouchers at the prothonotary's office, and to file their contestations of the account, if they contest it, within a delay of fifteen days, which may be extended by the court or a judge upon application pursuant to notice.—Ord. 1667, tit. 29, art. 13.—Pot., Proc. civ., 91.

**528.** Parties accounted to whose interests are the same, must name the same attorney; if they do not agree in their choice, the attorney first in the case remains attorney of record, saving the right of the other parties accounted to, to employ attorneys of their own, upon payment of all costs occasioned thereby.—Ord. 1667, tit. 29, art. 11.—C. P. C., 529.

**529.** The accounting party has a delay of eight days after the filing of the contestation to file his answers in support of the account, and the other party has a similar delay to file his replications.—Ord. 1667, tit. 29, art. 13.—Pothier, Proc. civ., 91.

**530.** In default of filing the contestations, answers or replications within the delay, the party bound to file them is held

to admit whatever is contained in the document he fails to contest.—Pothier, *cod. loc.*

**531.** After the issues are completed upon the account rendered, the court may order the parties to proof respectively, according to the ordinary course, or may refer the case for settlement to arbitrators, or to a practitioner or an accountant, according to its nature.—Ord. 1667, tit. 28, art. 22.—Ord. 1566, art. 83.—Edit 1560, art. 2.—1 Pigeau, 248.

**532.** The judgment upon the account must contain a computation of the receipts and expenditure, and establish the balance if there be any.—Ord. 1667, tit 29, art. 20.—C. P. C., 540.

**533.** If the defendant fails to render an account, the plaintiff may proceed to have one made out in the manner mentioned in the article 523.

### SECTION III.

#### *Of Surrender.*

**534.** The voluntary execution of any judgment ordering the restitution and delivery of any moveable or immoveable thing is effected, unless the judgment makes other provisions, by delivering the moveable object, and surrendering the possession of the immoveable, in such a manner that the party entitled thereto may take possession of it; and this must be done in conformity with the judgment, and the provisions contained in the title *Of Obligations* in the Civil Code.—Pothier, *Proc. civ.*, 149.

**535.** The voluntary execution of a judgment ordering the surrender of an hypothecated immoveable, is effected by means of a declaration of the defendant, filed in the prothonotary's office, to the effect that he surrenders it in compliance with the judgment and by his relinquishing his possession.—1 Pigeau, 594.—Pothier, *Proc. civ.*, 149.—Ord. 1667, tit. 27, art. 1.

**536.** When an immoveable is thus surrendered, the court or judge, upon application of the plaintiff, names a curator to the surrender, against whom all ulterior proceedings are directed.—Pothier, *Proc. civ.*, 185.

**537.** The curator has a right to collect the rents, issues and profits due and accrued from the time of the surrender, and may even grant leases if the sale is prevented during any considerable time.—The rents, issues and profits of the immoveable surrendered are treated as realty, and are distributed in the same manner as the price.—Stowe & Richer, in appeal, 1848. — Pothier, *Proc. civ.*, 193.—Couchet, 139.

### SECTION IV.

#### *Of Tender generally and Payment into Court.\**

**538.** A tender, or a putting in default to accept, must

\*The subject of tender and deposit has been somewhat modified by the judicial deposit act, (35 Vic., c. 5, Q.) and the amending act, (36 Vic., c. 14, Q.)

describe the object offered; and if it be of money, it must contain an enumeration and description thereof.—C. P. C., 812.

**539.** Tender may be made by an authentic document, or in any other manner which admits of its being legally proved.—Tender may be made in a suit by demanding record thereof, and must be accompanied with payment into court.—1 Pigeau, 435.

**540.** Tender may be made at the domicile elected in a contract.—*Ibid.*—2 Pigeau, 185.

**541.** The authentic document recording the tender, if there is one, must state the answer made by the creditor, or the person representing him, the fact of his being called upon to sign such answer, and in default of his signature, the reason why it was not signed.—*Ibid.*—C. P. C., 813.

**542.** A debtor who has made a tender and is afterwards sued, may renew it by his pleadings and pay the amount into court.—C. C., art. 1162.

**543.** Moneys paid into court cannot, without the authorization of the court, be withdrawn by the party who paid them in.—Unless the tender is conditional the party to whom it is made is entitled to receive the moneys paid in, without prejudicing his claim to the remainder.—Rule of Practice, 4 January, 1854.

**544.** The expense of the tender is borne by the debtor; but, if it is declared sufficient,

the costs attending the payment into court are borne by the creditor.—Pothier, Oblig. 550, 573, 574, 580.

## CHAPTER SECOND.

### OF COMPULSORY EXECUTION OF JUDGMENTS.

#### SECTION I.

##### *General Provisions.*

**545.** The judgments of a court can only be put into execution by means of a writ issuing in the name of the sovereign and addressed to the sheriff of the district [in which it is to be executed.]—The writ is attested and signed in the same manner as original writs, it must bear the seal of the court and must mention the date of the judgment to be executed and the day on which it is returnable.—C. S. L. C., c. 83, s. 139; c. 85, s. 2, § 4.—25 Geo. III., c. 2, s. 30.—C. P. C., 545.

**546.** Judgments can only be executed upon the party against whom they are rendered.—If he changes his civil status or dies before execution, judgment cannot be executed against him nor against his representatives, unless another judgment is obtained, declaring that the former may be enforced by execution against him in the one case, or his representatives or assigns in the other.—But if the party dies or changes his civil status after

execution has commenced, the execution continues.—C. de P., 168.—Pothier., Proc. civ., 152.

**547.** If the judgment does not order a thing that is purely, personal to the plaintiff, it may be executed in his name, even after his death; but if any contestation arises upon the execution, the representatives of the deceased party must intervene.—Sevigny *vs.* Bertrand & Mercier, Intervt., No. 848, S. C., Montreal, 24 Septembre, 1850.—2 Loisel, Institut, liv. vi., tit. 5, art. 2.—Pothier, Proc. civ., 153.

**548.** When the judgment orders the performance of some physical act, the officer charged with its execution may use the necessary force for that purpose; observing, however, at the same time, all necessary formalities.—1 Couchot, 123.

## SECTION II.

### *Of Execution in Real Actions.*

**549.** When a party condemned to surrender or restore an immovable refuses to do so within the delay prescribed, the plaintiff may obtain a writ of possession to eject him and to be placed in possession.—Ord. 1667, tit. 27, art. 1.—Pot., Proc. civ., 148.

**550.** The officer entrusted with the execution of such writ must be accompanied by two witnesses, and draw up a minute of his proceedings.—Ord. 1667, tit. 33, art. 2.—1 Couchot, 123.

## SECTION III.

### *Of Execution in Personal Actions.*

**551.** Judgments for the payment of a sum of money cannot be executed before the expiration of fifteen days from their date.—Nevertheless upon an application of the plaintiff accompanied by an affidavit establishing circumstances under which simple attachment might issue before judgment, the judge may allow execution to issue before the expiration of fifteen days, but the sale cannot take place any sooner than if the writ of execution had issued after the ordinary delay.—C. S. L. C., c. 77, s. 27; c. 83, s. 201.—1 Pigeau, 411.

**552.** In all suits accompanied with attachment, either in the hands of the defendant or of third persons, in which the defendant has only been summoned through newspapers, a judgment rendered by default cannot be executed within a year, unless the plaintiff, in the presence of and to the satisfaction of a judge, gives good and sufficient sureties to pay back the moneys levied, in the event of the judgment being reversed upon revision, together with the costs of such revision.—This provision does not apply, however, to judgments rendered for wages, or salaries due for the manufacture or conveyance of rafts attached for the payment of such wages.—C. S. L. C., c. 83, s. 111, § § 1, 2.

**553.** A creditor may cause

to be seized in execution the moveable or immoveable property of his debtor, in the possession of such debtor, or moveables of his in the possession either of such creditor himself, or of third persons, if the latter do not object; if they do, the creditor must adopt a seizure by garnishment.—C. S. L. C., c. 83, ss. 134, 139.—Prothier, Proc. civ. 153, 174, 183.—1 Couchot, 125.—12 L. C. Rep., 403.—1 Pigeau, 659.

**554.** A creditor may exercise at the same time the different means of execution which the law allows him. He may cause the moveable property and the immoveables to be seized under the same writ, but he cannot proceed to the sale of the immoveables until after the moveables have been discussed; saving, nevertheless, the special provisions of law concerning building societies, cases of pledge, and the case mentioned in article 907; and saving also the cases of judgments rendered for the recovery of rents constituted under the Seigniorial Act of 1854, and of judgments declaring hypothecs.—C. S. L. C., c. 85, s. 1; c. 69, s. 14.—1 Couchot, 125.

**555.** [Seizure of moveables in execution takes place under a writ addressed to the sheriff of the place where the defendant's moveable property is situated, ordering him to levy the amount of the debt, interest, if any is due, and the costs, both of the suit and of the execution, and such writ *is made returnable* on a day

certain or sooner if possible.—If there be no moveable property to seize, the writ may be addressed either to the sheriff of the district in which judgment was rendered, or to the sheriff of the district in which the defendant has his domicile.] —If the creditor has received any part of his judgment claim, he is bound to make mention of it on the back of the writ of execution.—When the moveable property to be seized is at a distance of more than nine miles from the place where the writ issues, the party suing out the writ, or his attorney, may, by a written notice, require the sheriff to employ for the seizure a bailiff residing in the locality where it is to take place, and the sheriff is bound to comply, and in doing so he is freed from any liability resulting from irregularities or informalities in the execution of the writ.—\* C. S. L. C., c. 83, s. 129.—27 & 28 Vic., c. 39, s. 12.—25 Geo. III., c. 2, s. 30.—11 L. C. Report, 367; 3 do. 478.

§ 1. *Of seizure of moveables.*

**556.** The debtor may select and keep from seizure: †

\* The writ may be addressed to the sheriff or any bailiff of the district where issued, or to the sheriff or any bailiff of the district where it is to be executed.—33 Vic., c. 17, s. 1, Q.

† Special exemptions exist in favor of settlers on public lands, for which see 31 Vic., c. 20, Q.

1. The bed, bedding and bedsteads in use by him and his family;

2. The ordinary and necessary wearing apparel of himself and his family;

3. One stove and pipes, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one table, six chairs, six knives, six forks, six plates, six teacups, six saucers, one sugar basin, one milk jug, one teapot, six spoons, all spinning wheels and weaving looms in domestic use, one axe, one saw, one gun, six traps, such fishing-nets and seines as are in common use, and ten volumes of books;

4. Fuel and food, not more than sufficient for thirty days, and not exceeding in value, twenty dollars;

5. One cow, four sheep, two hogs, and food therefor for thirty days;

6. Tools and implements or other chattels ordinarily used in his trade, to the value of thirty dollars;

7. Bees, to the extent of fifteen hives.

Nevertheless, the things and effects mentioned in paragraphs four, five, and six, are not exempt from seizure, and sale when the suit is to recover the price of their purchase, or they have been given in pawn.—Ord. 1667, tit. 33, art. 14.—2 Bour.—Pot., Pro. civ., 154-5.—1 Pig., 611, 612.—C. S. L. C., c. 85, s. 3.—24 Vic., c. 27, s. 1.—C. P. C., 592.—C. S. L. C., c. 83, s. 142.—16 Guy. Rep. 78.—29 Vic., c. 8, s. 2.

557. Books of account, titles of debt, or other papers in the possession of the debtor, are exempt from seizure, saving what is mentioned in article 565.—5 L. C. Rep., 299.

558. The following are also exempt from seizure:

1. Consecrated vessels and things used for religious worship;

2. Alimentary allowances granted by a court;

3. Sums of money or objects given or bequeathed upon the condition of their being exempt from seizure;

4. Sums of money or pensions given as aliment, even though the donor or testator has not expressly declared that they should be exempt from seizure;

5. Wages and salaries not yet due.

Alimentary allowances and things given as aliment may however be seized and sold for alimentary debts.—Pot. Pro. civ., 154, 175.—3 Anc. Den. 417, 419, 420.—2 Bour. 670-1.—6 Bioche, 26.—1 Pig., 651.—C. P. C., 581, 582.

559. The seizure of moveables and moveable property is established by an inventory made by the sheriff, or his deputy, or by a bailiff authorized by him to that effect.—Ord. 1667, tit. 33, art. 6.—Pot., Proc. civ. 156-7.—C. P. C., 586.\*

560. The inventory must contain;

1. Mention of the actual domicile of the creditor;

\*See notes to arts. 48 and 55 ante, also 33 Vic., c. 17, s. 1, Q.



2. Mention of the writ of execution, its date, and its purport;

3. A description of the things seized, their number, weight and measure according to their nature. In the case of *the seizure of a registered vessel of fifteen tons burthen or over, the recital required by section 13 of chapter 41 of the consolidated statutes of Canada must be returned and filed together with the inventory.*—2, L. C. R., 471.—C. S. C., c. 41, s. 13.—C. P. C. 586.—35 Vic. (1871), c. 6, s. 15, Q.

4. The appointment of a guardian, or the name of the debtor;

5. The signature of the guardian or depositary, and of the witnesses, in the case of article 569, or mention that they cannot sign, and the signature of the seizing officer;

6. Mention of the day on which the seizure is made, and whether it was made before or after noon. \*

The sheriff or officer making

\* Demand of payment on judgment debtor.

"Whenever in any suit, a writ of execution has issued, and by reason thereof a demand of payment has been made upon the defendant, no other demand of payment need be made in such suit previous to the further execution of any other such writ, whether in the same or in any other district."—35 Vic., (1871), c. 6, s. 26, Q.

the seizure is bound to accept a solvent depositary offered by the debtor, and in such case he is not answerable for the acts of the depositary, if he proves that when he accepted him such denositary was solvent to the amount of the property entrusted to his care.—Sheriffs or bailiffs cannot take their relations or connections to the degree of consin-german, as guardians or depositaries of the things seized. Nor can they take as such the judgment debtor or his wife or children, on pain of being liable for all costs and damages.—Brothers, uncles or nephews of the judgment debtor may be appointed guardians, if they consent to be so.—The debtor must also, *if he is present*, be called upon to sign the inventory, and his refusal or inability to do so, or *his absence*, must be stated.—C. S. L. C., c. 92, s. 10.—Ord. 1667, tit. 33, arts. 1, 8.—Pot. Proc. civ., 159, 160, 161.—Ord. 1667, tit. 19, art. 13.—35 Vic. (1871), c. 6, s. 15, Q.

561. The inventory must be at least in triplicates, one of which must be given to the guardian or depositary and another to the debtor, and each triplicate must be signed by all those whose signatures are required by the preceding article.—Ord. 1667, tit. 33, art. 7.—1 L. C. Rep. 71.

562. The guardian or depositary has a right, at the time of his appointment, to remove the property in order to keep it in charge, and to place guards, if necessary, in

the place where it is.\*—If the seizing officer cannot find a responsible guardian or depositary, he may, after serving the inventory upon the debtor, have the things taken away and removed to a place of safety, until he finds such guardian or depositary.—If the person appointed guardian or depositary becomes, while the seizure lasts or is suspended, insufficient to be responsible for the property seized, the judge may, upon the application of the prosecuting creditor, authorize the appointment of another person sufficiently solvent or reliable, and may order that the property seized be placed under his care, or in his possession, by the sheriff, after a verification and inventory of the whole has been made.—Pot., Pro. civ., 167, 168.—1 Pig., 623, note.—C. C., art. 1828.

**563.** The sheriff or the bailiff, [upon an order from the judge, granted for cause shewn, upon application in writing by the creditor,] may have effects seized in the country parts removed to the nearest town, or some other place specified, in order that he may

there sell them.—C. S. L. C., c. 85, s. 2, § 2.

**564.** [If current money is seized, mention of its kind and quantity must be made in the inventory, and the sheriff must return it with the other moneys levied.]—C. P. C., 590.

**565.** [Debentures, promissory notes, whether negotiable or not, shares in banks, or other commercial or industrial associations, and other documents of commercial value, payable to order or to bearer, bank-notes included, are liable to seizure, and may be sold like all other moveable effects belonging to the debtor.]

**566.** The seizure of shares in any financial, commercial or industrial company or association, duly incorporated, is made by serving such company with a copy of the writ of execution, together with a notice that all the shares held by the defendant in such company are placed under execution. A similar notice is served upon the debtor.

**567.** If there is more than one place at which the company may be served, the service hereinabove mentioned, when made elsewhere than at the place where the transfer of shares and the payment of dividends may be validly made, has no effect against subsequent purchasers until a sufficient time has elapsed to allow notice of the service to be transmitted from the place where it was made to the place where transfers of shares should be entered; and the company is bound to effect

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\* In the case of the simultaneous seizure of cattle and fodder, the guardian may use the fodder to feed the cattle; even though it should subsequently appear that the hay did not belong to the defendant.—Johnson vs. O'Halloran, Queen's bench, (appeal side) Montreal, June, 1873.

such transmission.—The seizure of such shares includes all benefits and profits attached to them.—C. S. C., c. 70, ss. 3, 4.

**568.** The sheriff has a right to demand from the party seizing whatever sums of money may be necessary for the safe-keeping of the property seized, according to the provisions contained in articles 847 and 848.—1 L. C. J., 92.

**569.** If the debtor is absent, or if there is no person to open the doors, cupboards, trunks, or other closed places, or if he refuses to open them, the seizing officer must draw up a minute of the fact, and thereupon the judge, *or in his absence the prothonotary,\** may order the opening to be effected by all necessary means, in the presence of two witnesses, and with such force as may be required, without prejudice to coercive imprisonment in case of refusal, violence or other physical impediment.—Ord. 1667, tit. 33, art. 5.—C. P. C., 587, 591.

**570.** If the debtor has no domicile in the province, *or has ceased to reside within the district in which the judgment was rendered,†* the triplicate of the inventory of seizure is left for him at the office of the prothonotary of the court.—C. P.

\*34 Vic. (1870), c. 4., s. 6, Q.  
—This article as amended, applies to all cases in the circuit court, the clerk of which shall have the power thus given to the prothonotary.—*Ibid.*

† 35 Vic. (1871), c. 6, s. 16, Q.

C., 602.—C. S. L. C., c. 83, s. 64.

**571.** Immediate notice must be given to the debtor, and to the guardian or depositary, of the place and time at which the moveables will be offered for sale.\*—Pot. Pro. civ., 168.  
“*If the debtor has no domicile in the province, or has ceased to reside within the district in which the judgment was rendered, the notice may be left for him at the office of the prothonotary of the court.*—35 Vic. (1871), c. 6, s. 17, Q.

**572.** Saving the exception contained in the following article, the sale of moveables must be published by posting and reading a notice, in a loud and distinct manner, at the door of the church of the place where the seizure has been made, immediately after morning service on the Sunday next after the seizure; and if such seizure was not made within a parish, the publication must be made at some public place in the municipality, and the sale cannot take place before the expiration of eight days, reckoning from the day of such publication, and a certificate of such publication must be annexed to the record of the execution.—C. S. L. C., c. 85, s. 2, § 3.—C. Gen. 441-2-3.

**573.** In the cities of Quebec and Montreal, the sale of moveables seized is advertised

\* This notice must be in writing. Scott vs. Alain, and Alain, opposant. 4 Canada Law Journal, p. 60.

only by a notice, stating summarily the names of the parties, the nature of the effects and the time and place of sale, inserted in French in a newspaper published in that language, and in English in a newspaper published in the English language; and if there should be but one paper in the place, or if all the papers are published in but one of such languages, then the notice must be inserted in both languages in one paper; and a duplicate of such notice must be posted in the sheriff's office from the time of such advertisement in a newspaper, until the day of the sale, which cannot take place until after the expiration of eight days from the day of such publication.—27 & 28 Vic., c. 39, ss. 9, 10, 11.—No more than two dollars is allowed for the cost of such advertisement.

**574.** [Seizures in execution can only be made between the hours of seven in the morning and seven in the evening, except in cases of fraudulent removal, and may if necessary be continued on following days, affixing seals or placing guards.]

**575.** Seizures cannot be made on Sundays or holidays, except in cases of fraudulent removal, where the property is found upon the highway.—Pot., Proc. civ., 156.

**576.** If the property has been attached before judgment, it is not necessary to proceed to a verification, but it is sufficient to give notice to the debtor and guardian or de-

positary of the place and time of sale, as prescribed in article 571, and to give the notice required by article 572 or 573, as the case may be.—1 L. C. R., 279.

**577.** [If the moveables have already been seized and the debtor dispossessed, any creditor making a second seizure is bound to name the same guardian, who can only be discharged by the sale of the property so seized, the consent of all the seizing parties, or the order of a judge.]—Pot., Proc. civ., 166-7.—1 L. C. R., 94.

**578.** The party first seizing, who does not proceed with proper diligence, cannot prevent the sale by the next seizing creditor.—[If, when there is no opposition, the seizing party does not bring the moveable to sale within the delay fixed for the return of the writ, the seizure lapses, unless the delay for the return of the writ is extended by order of a judge to a certain subsequent day, of which order the prothonotary must make a note in the entry book of executions.]

**579.** A creditor who has made a seizure of the effects of his debtor cannot obtain a second writ of execution, unless the previous writ has been returned or accounted for.—Pot., Proc. civ., 167.

## § 2. *Of oppositions to the seizure of moveables.*

**580.** A seizure of moveables in execution may be contested by opposition, either by the debtor himself, or by third

parties.—Pot., Proc. civ., 163 *et seq.*

**581.** The debtor may demand the nullity of a seizure of moveables in execution :

1. On the ground of informalities in the seizure, or of the exemption of some of the articles seized, under articles 556, 557 and 558 ;

2. On the ground of the extinction of the debt ;

3. For any reason of a nature to affect the judgment sought to be executed.

If a part only of the debt is extinguished, the opposition has the effect of preventing the sale for more than is due.—*Ibid.*

**582.** The execution may also be opposed by any party who has a right of ownership or of pledge in the property seized.—A lessor cannot, however, oppose the seizure and sale of the moveables subject to his claim, and he can only exercise his privilege upon the proceeds of the sale.—C. S. L. C., c. 83, s. 46,

**583.** Oppositions to the seizure and sale of moveables must contain an election of domicile by the opposant, and they stay proceedings, provided they are accompanied with an affidavit that the allegations contained in them are true, and that they are made not with the intent of unjustly retarding the sale, but with the sole view of obtaining justice.—80 & 87 R. of P.

**584.** Such affidavit is not necessary if the opposition is accompanied with a judge's

order to stay proceedings.—9 L. C. R. 447.—82 R. of P.

**585.** Oppositions are served upon the sheriff by leaving with him the original thereof, which he is bound to return into court without delay.—C. S. L. C., c. 85, s. 14, § 2.

**586.** After the return of the opposition, the opposant moves upon the other parties to the suit to declare whether they intend to admit or to contest it, and in default of such declaration the opposant has a right to be relieved from the seizure, with costs against the judgment debtor, unless the court otherwise orders.—84 R. of P.

**587.** If the other parties, or any of them, declare that they intend to contest the opposition, the contestation is subject to the rules which apply in ordinary suits.

**588.** The rules concerning peremption of suits apply equally to oppositions.—2 Bour., 664 *et seq.*

§ 3. *Of the sale of moveables under execution.*

**589.** If there is nothing to prevent the sale of the moveables seized, it takes place at the time and place mentioned in the notice.—If the sale has been retarded by any obstacle, subsequently removed, or if there were no bidders, new notices or publications must be given, but the sale cannot take place after the day fixed for the return of the writ, except in the case mentioned in art. 578.—Pot. P. C., 168.—C. S. L. C., c. 85, s. 2, § 4.

**590.** The guardian or depository is bound, at the time fixed for the sale, to produce all the effects seized, which were placed in his charge.--Pot. P. C., 162, 168.

**591.** The sheriff or other seizing officer, cannot, either directly or indirectly, bid upon the property put up for sale, nor become purchaser thereof.--*Ibid.* 169.--C. S. L. C., c. 85, s. 7.

**592.** The officer conducting the sale must make minutes thereof, specifying each article put up for sale, the name and residence of each purchaser, and the price of each purchase.--Ord. 1667, tit. 33, art. 18.--C. P. C., 625.

**593.** The things seized are adjudged to the last and highest bidder, subject to immediate payment of the price, and in default of such payment the thing adjudged is immediately put up again.--*Ibid.*, art. 17.--C. P. C., 624.

**594.** The officer conducting the sale cannot, either directly or indirectly, receive anything beyond the price of the adjudication, under pain of being liable for extortion.--*Ibid.*, art. 18.

**595.** The sale must not proceed beyond the amount necessary to pay the debt in principal, interest, and costs.--To this end, the judgment debtor has a right to determine the order in which the effects are to be put up for sale.--C. P. C., 622.

**596.** The guardian or depository has a right to a discharge or receipt for the effects

which he produces, and the minutes of sale must make mention of any effects which have not been produced.--Pot. P. C., 168.--C. P. C., 605.

**597.** The guardian or depository may be condemned, even on pain of coercive imprisonment, to produce the property he took in charge, or pay the amount due to the seizing creditor. He may however upon establishing the value of the effects which he fails to produce be discharged upon payment of such value.--Pot., P. C., 168.--2 L. C. J., 297.

**598.** The adjudication of moveable property under execution transfers, by law, the ownership of the things thus adjudged.--In the case of seizures of shares in any financial, commercial or industrial company or association, duly incorporated, the sheriff is bound within ten days after the sale, to serve such company or association, in the manner mentioned in article 567, with a certified copy of the writ of execution, endorsing thereon a certificate designating the person to whom he adjudged the shares seized, and such purchaser thereupon becomes a shareholder in the company and has all the rights and obligation of one, and may require an entry to be made to that effect, in the manner prescribed by law, by the officer appointed for that purpose by the company.--C. S. C., c. 70, ss. 2, 3, 4.--3 L. C. J., 122.

**599.** No demand for the

annulling or rescinding of a sale of moveables under execution can be received against a purchaser who has paid the price, saving the case of fraud or collusion, and without prejudice to the recourse of the party aggrieved against the seizing creditor and those acting in his behalf.—Ouimet & Senécal, 3 L. C. J., p. 35.—C. P. C., Gen., 457.

**600.** [Immediately after the sale, the costs thereof, including the pay of the appointed guardian must be taxed by a judge or by the prothonotary, subject in the latter case to revision, if required.]—Pot., P. C., 169.

§ 4. *Of the payment and distribution of the moneys levied.*

**601.** The moneys seized or levied, after deducting the duties thereon and taxed costs, may be paid by the sheriff to the seizing creditor, if no opposition for payment has been placed in his hands; otherwise, he must return them into court, to await such judgment as to right shall appertain.—*Ibid.* 170.—C. S. L. C., c. 83, s. 146, § 2.

**602.** When the moneys levied have been returned into court, the plaintiff has a right to be paid in preference to all other chirographic creditors; saving the right of a prior seizing party for his costs, the case of the insolvency of the debtor, and the case of privileged claims.—Pot. P. C., 174.

**603.** When the moneys are returned into court, as well as

in all other cases where moneys of which an account has been rendered into court or moneys other than the proceeds of immoveables are to be distributed, and insolvency of the debtor is alleged, the distribution of the moneys cannot take place until his creditors generally have been called in.—The creditors are called in upon the order of the court or a judge, published twice in the French and English languages in the *Quebec Official Gazette*,\* requiring them to file their claims within fifteen days from the date of the first insertion.—23 Vic., c. 57, s. 52.—C. S. L. C., c. 83, s. 147, §§ 3, 4.

**604.** The claims may be made out in a summary manner, and it is sufficient for them to state the names, occupation and residence of the claimant, and the nature and amount of his claim.—They must be accompanied with vouchers, if there are any, or, if not, with an affidavit that the sum claimed is lawfully due.—*Ibid.*

**605.** The moneys are distributed according to the order prescribed in the title *Of Privileges and Hypothecs*, and the title *Of Merchant Shipping* in the Civil Code, and in the provisions hereinafter contained.

**606.** The following order is observed as regards the collocation of judicial costs :

1. Costs of seizure and of sale;
2. The duty payable upon

moneys levied or paid into court;

3. The fees of the officer receiving moneys levied or paid in;

4. The fees upon the report of distribution;

5. The fees of the attorney prosecuting the distribution;

6. Costs, subsequent to judgment, incurred in order to effect the seizure and sale, and according to the priority of date or of privilege when there are several seizing creditors;—C. S. L. C., c. 37, s. 8.—The costs of a prior seizing party have a preference over those of a subsequent one.—2 Bour. 673.—Pot. P. C., 166.—Laur. 224.—C. S. L. C., c. 85, s. 14.

Nevertheless, if two or more writs of execution issue upon judgments rendered on the same day against the same debtor, the costs thereon are paid concurrently.—C. S. L. C. c. 85, s. 14.

7. Costs of affixing seals, or of inventories, when ordered by the court.

8. *The plaintiff is next paid his costs of suit.*—33 Vic. (1870), c. 17, s. 2, Q.—Eastern Townships Bank *vs.* Pacaud, 17 L. C. Rep. 126.

607. The crown has a preference over all other creditors upon the proceeds of executions against moveable property which under particular statutes is subject to any of the following duties:—Customs dues; excise duties; duties imposed upon timber cut; tolls; inspection dues on vessels, railways, or others similar.—C. S. C., c. 17, ss. 10,

11, 14, 41, §§ 3, 80, 84; c. 19, ss. 8, 10, 23, 24, § 2; c. 23, ss. 1, 3, 4, 8.—C. N. 2098.

608. The owner of a thing, who has lent, leased or pledged it, and who has not prevented its sale, has a right to be paid the proceeds of its sale, after the claims mentioned in articles 1995 and 1996 in the Civil Code, and the privileged rights of the crown mentioned in the preceding article, and the claim of the lessor, have been collocated.—Pot. P. C., 173.

609. The same rule applies to the owner of a thing which has been stolen, who would not have lost his right to revendicate it, had it not been judicially sold.

610. Persons who have preserved the right of being collocated upon the price of the thing sold, by reason of a right of pledge or of retention which they had upon such thing, rank according to the nature of the pledge or of their claim.\* The following is the order amongst them: carriers, hotel-keepers, mandataries and consignees, borrowers in loan for use, depositaries, pledgees, workmen upon things repaired by them, purchasers against whom the right of redemption is exercised, for the reimbursement of the price and the moneys laid out upon the property.—Pot.; Prop. 343; Dep. 74; Vente. 323, 326; Prêt à us. 43; Charte-partie. 90; Proc. civ., 192.—Paris,

\* See 39 Vic., c. 23, Q.



181, 182.—Ferr. sur art. 181, no. 1.—2 Grenier, Hyp. 298.—18 Dur., 509.—Tropl. Nantis. 100.—C. S. C., c. 20, s. 90, § 3; s. 91.—Den., Actes de Not., 108-9.—C. N. 2102.

**611.** In the absence of any special privilege, the crown has a preference over chirographic creditors, for sums due to it by the defendant.

#### SECTION IV.

##### *Of seizure by garnishment.*

**612.** Execution upon the moveable effects of a debtor, which are in the possession of a third party, may, in all cases, and must, when such third party does not consent to their immediate seizure, be effected by means of seizure by garnishment.—The same means must be adopted in executing upon debts due to the debtor other than those mentioned in article 565.—Pot., P. C., 156, 174, 180, 182.—1 Pig., 645-6, 663.—Gen., 472.—C. P. C., 557, 558.—1 L. C. R. p. 114.

**613.** Seizure by garnishment is made by means of a writ issuing from the court which rendered the judgment, ordering the garnishees not to dispossess themselves of the moveable effects belonging to the debtor which are in their possession, nor of such moneys or other things as they owe him, or will have to pay him, until the court has pronounced upon the matter; and to appear on a day fixed, to declare under oath what effects they have *belonging* to the debtor, and

what sums of money or other things they owe him or will have to pay him.—Pot., P. C., 176.

**614.** This writ also summons the debtor to shew cause why the seizure should not be declared valid, and mentions the date and amount of the judgment in satisfaction of which it is issued; and is moreover clothed with the formalities of ordinary writs of summons.—Pot. P. C., 176.—C. P. C., 559, 563.

**615.** The rules concerning the service of ordinary writs of summons apply to seizures by garnishment.\*—Nevertheless, the garnishee cannot be condemned by default, unless the writ of summons or other order to appear has been served upon him personally.—Upon satisfactory proof that a garnishee conceals himself in order to avoid such personal service, service at his domicile is held to be sufficient.—If the defendant upon the principal demand has been summoned as an absentee, the summons upon the garnishment may be served upon him at the prothonotary's office, but if he did not leave the province until

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\* The service of an attachment by garnishment upon the treasurer of the province, or a treasury deposit agent, under the judicial deposit act, may be effected by mailing a copy of the writ to the treasurer, and by service upon the agent in the ordinary manner.—35 Vic. (1871), c. 5, s. 23. Q.

after service of the principal demand, he must be summoned upon the garnishment according to the provisions of article 68.—The defendant is bound to answer the proceedings by garnishment within the same delays as upon a principal demand.—6 L. C. R. 148.—10 L. C. R. 21.—7 L. C. J. 227.—C. S. L. C., c. 83, ss. 59, 62.

**616.** The effect of seizure by garnishment is to place the effects and debts of which the garnishee is debtor under judicial control, and to sequester in his hands all corporeal things, in the same manner as if he had been specially appointed guardian.—Pot. P. C., 177.

**617.** The garnishee is bound to make his declaration in the office of the prothonotary of the court which issued the writ, before such prothonotary, who is authorized to administer to him the necessary oath. Nevertheless, if the garnishee reside in another district than the one in which the writ of seizure by garnishment has issued, he may, on or before the day fixed for the return of the writ, make his declaration before the judge or the prothonotary of the district where he resides, and such prothonotary is bound to transmit the same to the court where the suit is pending.—C. S. L. C., c. 83, s. 136, § 3; s. 137.—C. P. C., 571.

When a seizure by garnishment is made in the hands of a corporation, the declaration is made by an attorney authorized in the same manner as

for answering interrogatories upon articulated facts, as provided in article 224.

**618.** The garnishee's declaration must be made on the day appointed by the writ, or on the next following juridical day.—It may be made at any time before the return day, at the prothonotary's office from which the writ issued, but in such a case it cannot be received unless it is accompanied with a bailiff's return, certifying that previous notice, of at least twenty-four hours, has been given to the plaintiff, of the garnishee's intention to make his declaration before the return of the writ.—*Ibid.* s. 138, § 2.

**619.** The garnishee must declare in what he was indebted at the time of the service of the writ upon him, in what he has become indebted since that time, the cause of debt, and any other seizures made in his hands.—If the debt is not yet payable, he must declare when it will be.—If his indebtedness is conditional or suspended by any hindrance, he must also declare it.—He must furnish a detailed statement of the moveable effects in his possession belonging to the debtor, and declare by what title he holds them.—[The judgment creditor has a right to be present when the garnishee makes his declaration, and to put him any questions tending to prove any obligation of the garnishee towards the judgment debtor, saving all objections, which a judge, if present, may decide

at once, or which otherwise, the prothonotary must note down for subsequent decision thereon by the court.—Pot. P. C. 176.—Gen., 475.—C. P. C., 573-4, 578.—2 L. C. J., 167.

**620.** The garnishee is entitled to his travelling expenses, which must be taxed by the judge or by the prothonotary who receives his declaration, and he may retain the amount thereof out of the sums in which he is indebted; and, if he owes nothing, such taxation may be enforced against the party suing out the writ, by an execution emanating from the court from which the writ issued.

**621.** If the declaration of the garnishee is not contested, and he has not declared that any other seizure has been made in his hands, the court, upon an inscription for judgment, orders him to pay to the plaintiff, on account or to the extent of his debt, the moneys seized, according to their sufficiency.—This judgment must be served, and the delay for executing it dates only from the day of such service.—1 Pig., 658.

**622.** If there are several seizures at the suit of different creditors in the hands of the same garnishee, each seizure has a preference over the subsequent seizures, according to the date of its service upon the garnishee, except in cases of privilege, unless the insolvency of the common debtor is alleged, in which case proceedings must be taken upon the first seizure to call in the *creditors*, in the manner pro-

vided in article 603, and the garnishees, in such case, are condemned to pay into court the amounts they acknowledge to owe.—Pot., Proc. civ., 179.—Gen. 477, 479, 480.—1 Pig. 659.

**623.** If the moneys, or other things due by the garnishee, are only payable at a future time, he may be condemned to pay them when such time arrives, and if they are due under conditions which are not yet fulfilled, the court may, upon motion of the seizing party, maintain the seizure until such conditions are fulfilled.

**624.** Garnishees, who do not make their declaration in the manner hereinabove prescribed, are condemned as *personal* debtors of the seizing party, to the payment of his claim.—They may, however, obtain leave to make their declaration at any time, even after judgment, upon payment of all costs incurred upon the seizure.—C. S. L. C., c. 83, s. 137, § 2; s. 138.—*Tailhades vs. Talon, & Fabre, garnishee*, 1 L. C. R., 140.—Pot., P. C., 176.—C. P. C., 577.

**625.** The judgment rendered upon a garnishee's declaration of indebtedness, is equivalent to a judicial assignment to the seizing creditor of the judgment debtor's title of debt, and effects subrogation.—6 L. C. R., 170-1.

**626.** The seizing party must declare within eight days whether he intends contesting the garnishee's declaration, unless a further delay be granted to him by the court or

judge, and he must at the same time file his grounds of contestation, after serving them upon the garnishee, and notifying the latter to answer the same within the same delay as is allowed for answering exceptions and pleas.—He cannot, however, forfeit his right to contest without an order of the court to that effect.—98 R. of P.

**627.** In other respects, contestations of garnishees' declarations are subject to the same rules as those of ordinary suits.

**628.** Besides the things enumerated in articles 557 and 558, the following are also exempt from seizure:—Pay and pensions of persons belonging to the Army or to the Navy;—Salaries of public officers; \*—Contingent emoluments and fees due to ecclesiastics and ministers of worship, by reason of their actual services, and the income of

their clerical endowment.—[The salary of school teachers.]—Pot. P.C., 186-7.—Anc. Den., p. 416-7.—C. P.C., 580.

**629.** If a garnishee declares that he has in his possession moveable effects, the judgment orders that they shall be sold, and the garnishee is bound to deliver them to the officer charged with selling them.—If the garnishee has in his hands negotiable paper or titles of debt payable to bearer, he may be condemned to deposit them in the prothonotary's office, or to deliver them to a person named by the court, according to circumstances.—11 L. C. R., 284.—1 Pig., 630.

**630.** The proceeds of the sale of such moveable effects are afterwards distributed in the same manner as other moneys levied under execution against moveables.—1 Pig., 664.

**631.** If a garnishee declares that he is not indebted, and he cannot be proved to be so, the court orders him to be discharged from the seizure, and condemns the seizing party to pay the costs.—Pot., P. C., 176.

## SECTION V.

### *Of Execution upon Immoveables.*

#### *§ 1. Of the seizure of immoveables in execution.*

**632.** The seizure of immoveables can only be made against the judgment debtor, and he must be, or be reputed to be, in possession of the same

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\* By the 38 Vic. (1875), c. 12, Q., certain proportions of the salaries of public officers in this province are made liable to seizure; but this act has been held not to apply to the salaries of employees of the Dominion Government. *Dorion vs. Barrette & Lamothe, garn.*, No. 11708, C. C., Montreal, 1876, Johnson, J.; *Beauvais vs. Lefebvre, & Lamothe, garn.*, No. 11776, C. C., Montreal, 1876, Johnson, J.; *Evans vs. Hudon, & Brown, garn.*, Sup. C., Montreal, Dec. 1877, Rainville, J.

*animo domini*.—Pot. P. C., 184. No seizure can be made of immoveables declared by the donor or testator thereof, or by law, to be exempt from seizure.\* — Constituted rents representing seigniorial dues are seized and sold with the formalities prescribed by the act 27-28 Vict. ch. 39.

**633.** The seizure of immoveables can only be made in virtue of a writ, clothed with the same formalities as writs of execution against moveables, ordering the sheriff to seize the immoveables of the defendant and to sell them in satisfaction of the condemnation pronounced against him in principal, interest and costs.—The date of the judgment must be inserted in or written and certified upon the writ, under the signature of the prothonotary. — Exceptional provisions regulate the sale of immoveables for the payment of municipal taxes and assessments.—25 G. III., c. 2, s. 30; C. S. L. C., c. 83, ss. 130, 140.

**634.** [The writ is addressed to the sheriff of the district in which the immoveables belonging to the judgment debtor are situated, and is executed by the sheriff himself, or by one of his officers.]—C. S. L. C., c. 83, s. 40.—12 L. C. R., 403.

**635.** When any of the immoveables to be seized is

situated at more than nine miles from the place where the writ of execution issues, the sheriff, upon the written demand of the creditor or of his attorney, is bound to employ for making the seizure, the publications and the adjudication, such bailiff residing in the locality in which the immoveable is situate as the creditor indicates, and in such case the sheriff is discharged from any liability resulting from the acts of such bailiff, and the seizing creditor becomes alone responsible. The seizing creditor, in order to avoid costs, may also undertake the transmission of the documents belonging to the execution, and the bailiff is bound to return them to him, and on doing so is discharged from any consequent responsibility. —The other provisions of article 555 apply likewise to writs of execution against immoveables.—27 & 28 Vic., c. 39, s. 12.

**636.** When an immoveable is situated partly in the district in which the judgment was rendered and partly in another, it may be wholly seized in execution, in the same manner as if it were wholly in the district in which the judgment was rendered.—C. S. L. C., c. 85, s. 5.

**637.** Before proceeding to seize immoveables, the seizing officer calls upon the defendant to declare and specify his immoveable property, except the case of immoveables surrendered in a suit and the cases mentioned in article 641; and

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\* Lands granted to settlers are exempt from seizure for debts contracted before such grant.—31 Vic., c. 20, Q.

upon his failure so to declare and specify, the executing officer may seize the property in possession of the defendant, at the risk and peril of the latter.—4 L. C. R., 227.

**638.** The seizure of immoveables is recorded by minutes, which must contain :

1. Mention of the title under which the seizure is made ;

2. Mention of the defendant having been called upon, as required by the preceding article ;

3. A description of the immoveables seized, indicating the city, town, village, parish or township, as well as the street, range or concession in which they are situated, and the number of each immoveable, if there exists an official plan of the locality ; if not, it must mention the coterminous lands. If the property to be seized consists of incorporeal rights, such as rents, leases, or other real charges, mention must be made of the title under which they are due, with a description, as above mentioned, of the real property charged with the same ;

4. Mention that the minutes are made in duplicate, and that one duplicate thereof has been delivered to the judgment debtor, either personally or at his actual or legal domicile.—8 L. C. R., 299.—C. S. L. C., 37, s. 74, § 4.—Pot. P.C. 190-1,

**639.** The seizing party's domicile is elected at the sheriff's office, without its being necessary to elect another, or to mention it in the minutes.

**640.** The judgment debtor,

as well as his seizing creditor, may cause the ground rents and charges upon the immoveables seized to be mentioned in the minutes ; but it is not necessary to mention rents established in redemption of seigniorial rights, and any oppositions filed for that purpose cannot retard the sale, but must be returned by the sheriff, and no costs can be obtained thereon by the opposants.—C. S. L. C., c. 41, ss. 54, 55 ; c. 85, s. 6, § 2.

**641.** No minutes are necessary in suits instituted by building societies for bringing to sale the immoveables subject to their hypothec or right of pledge, nor in the case of article 907.—C. S. L. C., c. 69, s. 14, § 2.

**642.** [When the sheriff has seized an immoveable upon a defendant, he cannot seize it again at the suit of another creditor, or of the same creditor for another debt, as long as the first seizure subsists ; but he is bound to note any subsequent writ of execution as an opposition for payment upon the first writ ; and in such case the first seizure cannot be abandoned nor suspended, except in consequence of oppositions applicable as well to the seizing creditor as to those whose writs of execution have been noted as oppositions, or with their consent, or by an order of a judge.]—9 L. C. R., pp. 69, 456.

**643.** [In the event of the seizing creditor abandoning the seizure, or receiving payment of his claim, the sheriff

is bound to continue the proceedings in the name of the seizing creditor, and at the cost of the judgment creditors, whose writs have been noted, in order to satisfy the claims specified in the subsequent writs of execution, provided the seizure was made with all requisite formalities.]—1 L. C. R., 95.—Pot. P. C. 210.—1 Pig. 756.

**644.** From the moment that immoveables have been seized, the debtor cannot, on pain of nullity, alienate them. The alienation avails, however, if the seizure is declared null, or if, before the day fixed for the sale, the purchaser or the debtor pays into the hands of the sheriff a sufficient sum to discharge the claims of the creditor in whose name the seizure was effected, as well as the claims of any creditors whose writs of execution have been noted, and the amount thus deposited is forthwith paid by the sheriff to the creditors entitled to it.—C. S. L. C., c. 47, s. 1.—C. P. C., 686-7.

**645.** The immoveables seized remain in possession of the judgment debtor until the adjudication.—[But if the sale is prevented by any opposition, the seizing creditor may, according to circumstances, and in the discretion of the court, obtain the appointment of a sequestrator to receive the rents, issues and profits of the immoveables.]—Ord. 1626, art. 157.—1 Pig. 755.—C. P. C., 685.

**646.** The judgment debtor, cannot, nor can any other person, cut timber on the property

seized, or in any manner deteriorate the same, on pain of being imprisoned for a term not exceeding six months, under a rule of court or the order of a judge in vacation.—C. S. L. C., c. 85, s. 29.—C. P. C., 683.

**647.** The sheriff may, before seizing immoveables, exact from the party who places the writ in his hands the sum of four dollars, to meet the first expenses of the advertisements hereinafter required.—C. S. L. C., c. 85, s. 6.

#### § 2. Of advertisements.

**648.** The sheriff is bound to advertise in the *Quebec Official Gazette*,\* in the French and English languages, three separate times within the space of four months from the date of the first publication, the sale of immoveables seized.

The advertisement must contain :

1. The number of the cause and the nature of the writ, whether *fieri facias* or any other ;

2. The names and surname of the plaintiff in the suit, or if there are several plaintiffs, a designation of the first named in the writ, with an indication that there are others ;

3. The names and surname of the defendant in the suit, or if there are several defendants, a designation of the one first named in the writ, with an in-

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\* 31 Vic., c. 13, s. 4, Q.



dication that there are others.—If the plaintiff or defendant is acting as a tutor to minors, it is sufficient to state that he is acting as tutor to the minor children of the deceased person, without designating the minors by name;

4. A designation of the immoveables, or of the rents, as the case may be, as inserted in the minute of the charges therein mentioned, and of those also which the seizing party has requested in writing to have inserted, and mentioning upon which of the defendants the property is seized;

5. The time and place at which the immoveables or rents will be put up for sale and adjudged;

6. The date at which the writ of execution is returnable into court.—C. S. L. C., c. 85, ss. 4, 6 § 2, 10, 11, & schedule A.—C. P. C., 690-1-2-3-6.

*The sheriff shall send a printed copy of the advertisement prescribed by article 648, of the Code of Civil Procedure, to each hypothecary creditor, whose address is given in the list furnished by the registrar, through the post at least one month before the day fixed for the sale.—41 Vic., c. 15, s. 4.*

**649.** The advertisements of sheriff's sales must be printed consecutively and be preceded by a notice according to form 34 in the appendix to this code,\* or any other form of

like effect.—C. S. L. C., c. 85, schedule A.

**650.** The sheriff must also, if the seizure is made in a

and tenements have been seized and will be sold, at the respective times and places mentioned below. All persons having claims on the same which the registrar is not bound to include in his certificate under article 700 are hereby required to make them known according to law. All oppositions to withdraw, to annul, to secure charges, or other oppositions to the sale, except in cases of *venditioni exponas*, are required to be filed with the undersigned, at his office, previously to the fifteen days next preceding the day of sale. Oppositions for payment may be filed at any time within six days next after the return of the writ.

No.—*Fieri Facias*.

A. B. of the city of—, in the county of—, in the district of—, against C. D., of—, in the county of—, in the district of (as the case may be), (insert the description of the land or other immoveable property, the parish, seignior or township, and the county and district in which the same is situate),—in the county, &c., bounded, &c. To be sold at—, on the— day of—, at—o'clock in the (forenoon); the said writ returnable on the— day of—next.

A. B., Sheriff.

No. *Venditioni Exponas*,  
No. *Alias fieri facias*.

\* Form No. 34.—*Advertisement of Sheriff's sale.*

Public notice is hereby given, that the undermentioned lands



parish, cause the advertisement prescribed by the two preceding articles to be published and posted, on the third Sunday before the day fixed for the sale, at the door of the church of the parish in which the property seized is situated, immediately after morning service.—C. S. L. C., c. 85, ss. 4, 10.—27 & 28 Vic., c. 39, s. 1.

*Within one month after having advertised the sale of immovables, the sheriff shall apply to the registrar of the registration division wherein such immovables are situate, for a list of the addresses which may have been notified to him, and the registrar shall forthwith transmit such list to the sheriff.*—41 Vic., (1878) c. 15, s. 3, Q.

§ 3. *Of oppositions to the seizure and sale of immovables.*

**651.** The sheriff, in the absence of any consent on the part of the seizing creditors, cannot stop the sale of immovables, except upon a judge's order, or upon the filing of an opposition, accompanied with an affidavit on the part of the opposant that all the allegations in the opposition are true, to the best of the deponent's knowledge and belief, and that the opposition is not made with intent unjustly to retard the sale but solely to obtain justice.—C. L. C. R., 431, 479.—7 do. 130.—8 R. of P.

**652.** Every opposition to the seizure and sale of immovables or rents must be

filed at the latest on the fifteenth day before that fixed for the sale.—No opposition filed after this period can stop the sale; but if the object of the opposition is to withdraw, in whole or in part, the immoveable or the rent under seizure, or to impose upon the purchaser some charge which would be destroyed by a sheriff's sale, such opposition has the effect of an opposition for payment out of the moneys levied.—The sheriff in all cases is bound to return such oppositions into court.—C. S. L. C., c. 85, s. 15.

**653.** Notwithstanding the filing of any opposition to the seizure or sale of immovables or rents, the sheriff is bound to continue the publications hereinabove described; but he cannot in such case proceed with the sale without an order from the court.—Nevertheless when the opposition is founded upon grounds which only go to reduce the amount claimed, the plaintiff, upon giving the opposant notice that he admits his opposition, may proceed to the sale in conformity with the conclusions of such opposition.—C. S. L. C., c. 85, s. 17, § 3.

**654.** Every opposition must be delivered to the sheriff, and the return of its service upon him, if it is required, must be made at the foot of a copy thereof.

**655.** Saving the provisions of article 652 the sheriff is bound to return into court, within twenty four hours, any oppositions to the seizure and sale duly served upon him, together

with the writ of execution, all his proceedings, including a duplicate of the advertisement published in the *Quebec Official Gazette*, and a certificate of the oral publication if it has taken place.—*Ibid.* s. 16.

**656.** Every party who opposes unsuccessfully the sale of an immoveable or of a rent under seizure, is liable towards the party seizing and the defendant, not only for the costs incurred upon his opposition, but also for all damages resulting therefrom, including interest upon the amount due to the plaintiff, for the time during which the sale was stopped.—*Ibid.* s. 17.

#### *Of Oppositions to Annul.*

**657.** The party whose immoveables or rents are seized may oppose the seizure or the sale thereof, whether his opposition be founded on matters of form or on matters of substance.—Third parties may likewise file similar oppositions when they have an actual interest therein.—Pot. P. C., 206-7.

#### *Of Oppositions to Withdraw.*

**658.** Oppositions to withdraw may be filed by third parties who claim as their property part of any immoveable or rent under seizure.—Pot. P. C. 208.

#### *Of Oppositions to Secure Charges.*

**659.** Oppositions to secure charges may be filed by a third

party when an immoveable under seizure is advertised to be sold without mention being made of some charge with which the immoveable is burdened in his favor, and from which it might be discharged by a sheriff's sale.—Pot. P. C. 208.

Such oppositions are unnecessary and cannot be received :

1. For the purpose of securing servitudes.

2. For the purpose of securing dues or rents created in the place of seigniorial rights.—C. S. L. C., c. 36, s. 27; c. 41, s. 54.

#### *Of Oppositions to Charges upon Immoveables under Seizure.*

**660.** Any person aggrieved by reason of an immoveable being advertised as subject to a charge which prejudices his claim, may file an opposition to the end that the property be not sold subject to such charge, unless good and sufficient sureties be given him that it will be sold at a sufficient price to ensure payment of the amount due him.—This opposition may likewise be made either by the seizing creditor, or by the judgment debtor, when the mention of such charge has been made without the participation of the opposant.

#### *§ 4. General provisions.*

**661.** The proceedings upon oppositions to the seizure or sale of immoveables or rents

are the same as those upon oppositions to the seizure or sale of moveables.

**662.** When oppositions are decided before the day fixed for sale, if the seizure is not set aside, the sheriff on the day of sale may proceed upon the writ in accordance with the judgment of the court.—But if the oppositions are not decided until after the day fixed for the sale, the sheriff can only proceed to sell under a writ of *venditioni exponas*, and in conformity with the conditions therein mentioned.—C. S. L. C., c. 85, s. 22.

**663.** *The writ of venditioni exponas orders the sheriff to proceed with the sale of the immovable or of the rent under seizure, after one publication in French and English at the church door, on the third Sunday before the sale, and two advertisements in the Quebec Official Gazette, each such advertisement containing the information required by article 648.*—34 Vic., c. 4, s. 7, Q.—It contains moreover such other conditions as the court directs respecting the sale of the immovable or the rent.—C. S. L. C., c. 85, s. 22.—27 & 28 Vic., c. 39, s. 1.

**664.** When all the advertisements and publications required by law upon the first writ have been duly published and made, the execution of a writ of *venditioni exponas* cannot be stopped by opposition, unless for reasons subsequent to the proceedings by which the sale was stopped in the first instance, and upon a *judge's order*.—C. S. L. C., c.

85, s. 15, § 2.—6 L. C. R., 428, 7 do., 130.—9 do., 447.—10 do., 333.

*This article applies to executions against moveables.*—34 Vic., c. 4, s. 8, Q.

#### § 5. Of bidding and sale.

**665.** Bids may be given in writing at the sheriff's office at any time after the seizure, except during the eight days previous to the day fixed in the sheriff's advertisement for the sale of the immovable or rent, either upon the writ of *feri facias* when the sale has not been stopped, or upon the *venditioni exponas*, if the sale was prevented from taking place according to notice under the *feri facias*.—27 & 28 Vic., c. 39, s. 4.

**666.** Such bids, if made by a creditor of the judgment debtor, must be accompanied by an affidavit, sworn to before a judge, the prothonotary, a commissioner of the superior court, or before the sheriff, who is authorized to administer such oath, stating the nature and amount of his claim, and declaring that they are made in good faith, and not to delay the proceedings.—*Ibid*, § 2.

**667.** Such bids by a person who is not a creditor, must be accompanied with an affidavit, sworn to in the manner stated in the preceding article, stating that they are made in good faith, and not for the purpose of delaying the proceedings; and the sheriff may, if he thinks fit, require se-

curity from such bidder, or a deposit of a sufficient sum to cover the costs incurred by the seizing party up to the time of such bid, and the costs of a resale upon false bidding, in case it should be necessary.—*Ibid*, § 3.

**668.** Every such bid must be in writing, and must indicate:

1. The name of the case in which it is made, and the names, quality and residence of the bidder;

2. The immovable or rent bid upon;

3. The amount offered.—It must be signed by the bidder or be in the form of a notarial original.—*Ibid*, § 4, 5.

**669.** The sheriff is bound to endorse on each such bid the date of its filing, and to return it into court with all his other proceedings.—*Ibid*, § 6.

**670.** The sheriff is bound to furnish the officer by whom the sale is to be made, with a list of such bids as have been filed under the provisions of the above articles.—*Ibid*, s. 12.

**671.** Immovables under seizure, that are held in free and common socage, or otherwise than *en roture* or *en franc-alleu roturier*, and those which are situated in the district of Gaspé, under whatever tenure they are held, can only be offered for final bidding and adjudication at the registry office for the registration division in which they are situate.—Those which are situated in the city, town, or

chief-place where the sheriff's office is kept, or within the suburban limits (*banlieue*) thereof must be bid upon and sold at the sheriff's office.—All other immovables must be bid upon and sold at the door of the parish church of the locality, where they are situated.—C. S. L. C., c. 85, s. 4.—27 & 28 Vic., c. 39, s. 3.

**672.** The sale cannot take place on a Sunday, on pain of nullity.—C. S. L. C., c. 23, s. 1, § 2.

**673.** On the day and at the place appointed for the sale, the officer conducting the same, after reading the notice, the charges and conditions of the sale, and the bids filed in the sheriff's office, offers the immovables for sale, taking as an upset price the highest bid filed with the sheriff, if any were so filed.—27 & 28 Vic., c. 39, s. 4, § 7.

**674.** No bid can be received unless the bidder declares his names, quality or occupation, and residence, and minutes are taken of the bids received. Every bid implies an undertaking to buy the property at the price of such bid, subject to the condition that no higher valid bid will be given.—*Pot.*, P. C., 218.—C. P. C., 704.—*Héric: Vente des Imm.*, pp. 184-5.

**675.** The conditions of the sheriff's sale must express all those contained in the preceding article, in articles 687, 688, 707, 708, and in the advertisements.

**676.** The party upon whom the property is sold, if person-

ally liable for the debt, cannot become purchaser nor bid, neither can the persons mentioned in article 1484 in the Civil Code, nor can the sheriff or other officer entrusted with the sale.—Pot. P. C., 218, 220.—Héric., Vte des Imm. pp. 180-1.—C. P. C. 711.

**677.** Verbal bids may be made by proxy.—Pot., P. C. 223.

**678.** The officer conducting the sale must require from every bidder, before he receives his bid, a deposit of a sum of money equal to the costs then due to the seizing party upon the judgment and seizure, in the following cases:

1. In all cases wherein the sale has been stopped by an opposition;

2. In cases of resale upon false bidding, if the court has imposed that condition at the instance of some party to the suit.—C. S. L. C., c. 85, ss. 18, 22.

**679.** The court may also order such deposit or payment in any case where the party seizing, or his attorney, declares upon oath that he is credibly informed, and believes that the defendant, with a view to retard the sale, will cause the immovable to be adjudged to some insolvent or unknown person.—*Ibid*, ss. 18, 20.

**680.** In any case wherein two resales upon false bidding have taken place, the court may, upon application of any interested party order that every bidder shall be required to deposit or pay a sum equal to one third of the debt due to

the seizing party, in principal, interest and costs, but not in any case exceeding four hundred dollars.—*Ibid*, s. 20.

**681.** In the cases mentioned in the three preceding articles, the officer conducting the sale may, with the consent of the plaintiff, or of any person authorized by him, receive the bid of any bidder without requiring the prescribed deposit; and such consent must be in writing or given in presence of two competent witnesses whose names such officer must enter in his return.—*Ibid*, ss. 21, 23.

**682.** If the bidder fails to deposit forthwith the amount required, his bid is disregarded, and the proceedings are resumed upon the previous bid.—*Ibid* s. 19.

**683.** The sheriff, or other officer conducting the sale, is bound, immediately after the adjudication, to refund to every bidder except the purchaser, the amount deposited by each, and the deposit made by the purchaser is retained as part of the purchase money.—*Ibid*. s. 24.

**684.** [The adjudication of an immovable cannot be made before the expiration of a quarter of an hour from the time at which it was put up for sale, and after that delay, the officer before adjudging it must receive all other bids offered.]—Héric. Vte des Imm. 187.—C. P. C. 706.

**685.** The property must be adjudged to the highest and last bidder.—Pot., P. C. 220.

**686.** A person who has pur-

chased as proxy for another, is bound to furnish the sheriff, within three days, with the names, quality and residence of his principal, and his power of attorney, or a ratification of his bid and purchase; in default whereof he is held to have purchased in his own name.—He is likewise held to have purchased in his own name, if the person for whom he acted is not known, cannot be found, is notoriously insolvent, or is incapable of being purchaser.—Pot., P. C. 223.—Heric., Vte des Imm. 188.

687. The purchaser is bound to pay the purchase money, or the balance thereof, within three days, after which delay he is bound to pay interest.—C. S. L. C., c. 85, s. 18.—Pot. P. C. 225.

688. Nevertheless, the plaintiff or any other creditor whose claim is mentioned in the certificate of hypothecs herein-after mentioned, or who has filed an opposition in the hands of the sheriff, may, on becoming purchaser, retain the purchase money to the extent of his claim, until the judgment of distribution, provided he furnish the sheriff with good and sufficient sureties for all damages that might result to any party interested, in the event of the non-payment of such sum as the court may order such purchaser to pay into the hands of the sheriff.—C. S. L. C., c. 85, ss. 12, 13.

689. Upon payment by the purchaser of the price of the adjudication, or, if he is a creditor, of so much thereof as

he is not entitled to retain, the sheriff is bound to give such purchaser a deed of the sale made to him.—*Ibid.* s. 12.

Such deed must contain:

1. A designation of the writ under which the sale took place;

2. The number of the cause, and the names, surnames, additions and residence of the parties;

3. A description of the immoveable seized;

4. A statement that all the formalities prescribed by law have been observed;

5. The time and place at which the property was adjudged;

6. The conditions of the sale including those mentioned in articles 707 and 708;

7. A statement of the price at which the property was adjudged and how it was paid;

8. A conveyance of all the rights of the judgment debtor upon the immoveable.

§ 6. *Of resale for false bidding.*

690. Upon the sheriff's return that a purchaser has not paid the whole or a balance of his purchase money, nor given security when he may lawfully do so, the plaintiff may demand that the immoveable of which the purchase money thus remains due be resold for false bidding upon the purchaser thus in default. This is done by a petition served upon the latter with the delays required for ordinary summonses; and if the purchaser does not reside or has no domicile in the dia-

trict where the adjudication took place, the service may be effected at the office of the prothonotary of the court from which the seizure issued.—*Ibid.*, ss. 18, 26.

**691.** If the seizing party fails to proceed against the purchaser within a reasonable time, any other creditor whose claim appears upon the record, or the defendant, may demand the resale; but the purchaser cannot be held liable for the costs of more than one of such proceedings, and that of the seizing party, or, in his default, the one first served, has the preference over the others, provided the creditor follows it up with proper diligence.—10 L. C. R., 457.

**692.** The proceedings upon an application for resale for false bidding are summary, and no written contestations can be had thereon without leave of court.

**693.** In all cases the false bidder is liable for all damages and interest accruing to the judgment creditors, or to the defendant, from his failure or delay to pay the purchase money, and he is moreover bound to pay the difference between the amount of his bid and the price brought by the actual sale, if such price be less, without any right, if the price be greater, to the excess, which goes to the benefit of the judgment debtor and his creditors.—C. S. L. C., c. 85, ss. 18, 25.—Pot., P. C. 225-6.

**694.** The purchaser may

prevent the resale for false bidding by paying into the hands of the sheriff, before such sale, the amount of the purchase money, with the interest accrued thereon since the purchase, and all costs incurred by reason of his default.—Pot., P. C. 226.—2 L. C. R., 125.

**695.** If the price of the resale is not sufficient to cover the amount of the first purchase, with interest thereon, and the costs incurred on the resale, the false bidder may be held, even by coercive imprisonment, to pay the difference, upon an application to that effect, made by any party to the suit, in the same form and manner and under the same conditions as that for a resale.\*—C. S. L. C., c. 85, ss. 18, 25, 26.—Pot., P. C. 226.—C. P. C., 710.

**696.** Resale for false bidding can only take place upon a writ of *venditioni exponas*, ordering the sheriff to proceed with the sale upon such conditions as are fixed by the court.—The writ is subject to the formalities mentioned in article 663, and must contain a summary of the judgment ordering the resale for false bidding.

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\* But this coercion does not lie for the costs, but only for the difference of price. The Trust & Loan Co., & U. C. v. Doyle *et al.*, & Stanley, 3 L. C. J., p. 302.

§ 7. *Of the return of writs of execution.*

**697.** [The sheriff in whose hands a writ has been placed in order to the sale of the immoveables of a debtor, is bound, on pain of being liable for all costs and damages, to return such writ on the day appointed, together with a certificate of his proceedings, the minutes of the seizure, a duplicate of the advertisements, with a certificate of their publication and of the oral publications, the minutes of the bidding, the conditions of sale, a statement of his fees and disbursements, taxed in conformity with article 705, the certificate of the hypothecs charged upon the immoveable seized, and all oppositions and claims placed in his hands, or writs of execution which he has noted as oppositions.—If there be a return of *nulla bona* it must be made forthwith without waiting until the day fixed for the return of the writ.—If the debtor is an insolvent trader, the moneys must, on application to that effect, be given into the hands of the assignee lawfully appointed, together with the certificate of hypothecs.]—C. S. L. C., c. 36, s. 26; c. 85, s. 8.

**698.** If the sheriff has been unable to procure a certificate of the hypothecs before the day fixed for the return of the writ, he must mention the fact and file the certificate afterwards as soon as he obtains it.—*Ibid.*

**699.** As soon as immove-

ables have been adjudged, the sheriff must procure from the registrar of the registration division in which each immoveable is situated, a certificate of the hypothecs charged upon such immoveable, and registered up to the day of sale; which certificate the registrar is bound to furnish on payment of the fee established by order of the Governor in Council.—The word “hypothecs,” as regards this certificate, includes privileges and all other charges upon real estate.\*—C. S. L. C., c. 36, ss. 26, 32.

**700.** The certificate must contain:—All hypothecs registered against the property, as soon as hypothecs shall be thus registered, when the plan and book of reference shall be in force in the registration division; all hypothecs registered against the parties who, during the ten years previous to the sale, were owners of the immoveable; and all such anterior hypothecs as were registered anew during that period.—It must also contain the date of the act registered as creating or evidencing such hypothec, the date of its registration, the names, occupation and residence of the creditor and the name of the notary or notaries before whom the act was passed, if it is notarial; it must specify, when several immoveables are seized, which of them is affected by each hypothec, mentioning, as

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\* See note to arts: 648 and 650.



regards each hypothec, every partial payment registered, and the amount in principal and preserved interest which appears to be due; and if the registration of a hypothec has been renewed, the certificate must mention both the registration and the renewal.—But the registrar must not include hypothecs which appear by his books to have been extinguished or wholly discharged; and in searching for the hypothecs the registrar must not go beyond the date of a sheriff's title, a sale in bankruptcy or by forced licitation, or of any other sale having the effect of a sheriff's sale, or of a judgment of confirmation of title, with regard to the immovable in question, and which has been registered; except as to hypothecs which are not by such means discharged or extinguished.—If there is no hypothec registered, or if all the hypothecs registered appear to have been extinguished or discharged, he must state so in his certificate.\*—C. S. L. C.,

\*Form No. 36.—(In connection with articles 700, 935, 955.)

Certificate of the Registrar.

Lower Canada, }  
County (or Registration }  
Division of—) }

Privileges and Hypothecs registered in my office, which do not appear by the books therein to have been wholly discharged, and of which I am, under

c. 36, ss. 7, 26, 27, & schedule B.—55 Vic., c. 11, s. 4.

701. If the registrar cannot ascertain from the books and documents in his office, what persons were owners of the im-

the provisions of the Code of Civil Procedure of Lower Canada, required to grant a certificate, at the instance of A. B. of—, (Esquire, or as the case may be) the applicant named in the annexed notice of application for confirmation of title—or of C. D., &c., Sheriff of the district of—having the execution of the annexed notice of sheriff's sale,—or of E. F., &c., the party prosecuting the licitation mentioned in the annexed notice,—or of G. H. applying for such certificate:—

First. Against the property to which the judgment of confirmation—or the said notice of sheriff's sale—or the said notice of licitation is to apply,—or described in the application of the said G. H.; the following, viz:—a hypothec (or as the case may be) created by a (description of instrument) between—and — (names and qualities of parties) bearing date the— day of—18—, and registered on the— day of—18—, passed (if the instrument be notarial) before—notary public and his colleague, at—, as to which no discharge is registered (or as the case may be, mentioning any partial discharge registered,) and the sum

moveable during the ten years which preceded the sale, he must diligently enquire of the neighboring proprietors and

other persons well acquainted with the property, and such persons are bound to give him, in writing and under oath, such

which appears to be due for principal and interest secured by which hypothec appears to be \$—, and the registration of which hypothec has not been renewed (or was renewed on the—day of—18—, as the case may be.) And so on in the same form for any other privileges or hypothecs registered against such property.

*Secondly.* Against parties who, within ten years next preceding the date of the registration of the title sought to be confirmed as aforesaid,—or next preceding the date of the notice of sheriff's sale,—or next preceding the date of the notice of sale by licitation (as the case may be,)—or next preceding the date of the application of the said G.H.—have been owners of the said property, the following, viz:—

A hypothec created, &c., (as under next preceding head.)

*Thirdly.* In case of demand of certificate under article 2177 of the Civil Code.) Against G. H., of—, &c., —, the immediate author of the party who owned the said property at the commencement of the said ten years, the following, viz:

A hypothec created, &c., (as under preceding heads.)

*If there is no privilege or hypothec required to be certi-*

*fied under any one or more of the foregoing heads, the Registrar will instead of the words, "the following, viz:" insert the word "None."*

*Until plans and books of reference, under articles 2168 and 2169 of the Civil Code, are in force in the county or registration division, the registrar may omit the first head.*

*If the registrar was not able to ascertain from the books and documents in his office, who were the owners of the property during the ten years aforesaid, or who was the author of the party who was the owner thereof at the commencement of the said ten years, he will add:*

*And inasmuch as I was not able to ascertain, from the books and documents in my office, who all the owners of the property during the ten years aforesaid were, (or who was the author, &c., stating the requisite fact or facts which he was not able to ascertain from the books or documents in his office),—I have, therefore, as required by the said Act, ascertained by the affidavits of — and —, hereunto annexed, that — was the owner of the said property in the year 18— (or, as the case may be,*

information as they are possessed of. The registrar, in his certificate, must mention the information he has thus obtained, and take care that every fact upon which his certificate is thus based is attested by two witnesses, whose affidavits, duly sworn to before him or any other competent officer, are annexed to such certificate. \*—C. S. L. C., c. 36, s. 8.

*mentioning all the facts so ascertained*); all which I hereby certify to all whom it may concern. Witness my hand, at— this — day of—, 18—.

O. K.,

Registrar of the county or registration division of—.

\*Form No. 37.—(In connection with article 701.)

Lower Canada, }  
District of—.

A. B., of—, in the county (or registration division) of —, (farmer) maketh oath, (or solemn affirmation) as follows:

That to the personal knowledge of this deponent (or affirmant) A. B., of—, was, in or about the year 18— in possession as owner of the following property (*describe the property as in the foregoing form, or if such party was so in possession of part only of the said property, say,*) was in or about the year 18— in poss-

702. If the immoveable in question was, during the ten years which preceded the sale, in another county or registration division, of which neither the books, entries and documents relating to such immoveable, nor copies thereof have been transmitted to the registry office of the county or registration division in which the immoveable was situated at the time of the sale, the registrar states the fact in his certificate; and in every such case the sheriff shall obtain from the registrar of such other county or registration division, a certificate of all hypothecs registered while the immoveable was within such county or registration division, and

ession as owners of (*describe the part*), forming part of the following property (*describe the property as in the foregoing form, and if the property was in the possession of several persons during the ten years, declare in the same manner the time during which each of them has possessed the property or any portion of it,*) and the deponent (or affirmant) hath signed.

E. F.

Sworn (or solemnly affirmed) before me, at—, this— day of—, 18—.

L. M.

Registrar or Justice of the peace for district of—.

*The words of the foregoing are to be varied so as to meet the circumstances of the cases in which they are used.*

the latter registrar likewise is subject to the provisions of the two preceding articles.—*Ibid.* s. 10.

**703.** [After the plan and book of reference have been deposited in any registry office, conformably to the provisions of articles 2168 and 2169 of the civil code, the governor may, by an order in council, change the form of certificate to be given by the registrar as hereinabove prescribed; and every such order is published in the *Quebec Official Gazette*,\* and takes effect from and after the day therein named, provided such day be not less than one month after the publication of such order.]

**704.** In the case of resale for false bidding, the sheriff need not obtain a certificate of hypothecs if one has already been filed with the return made upon the first sale.

**705.** The sheriff is allowed out of the moneys which he has levied, all costs incurred by him to effect the sale, and all fees belonging to his office, after they have been taxed by a judge † or the prothonotary, and the cost of the certificates of hypothecs; and he must hold the balance subject to the order of the court.—C. S. L. C., c. 85, s. 9; c. 36, s. 26, § 3, 7, 8.

\* 31 Vic., c. 13, s. 4, Q.

† The sheriff is personally liable for the cost of this certificate if ordered before day of sale.—*Lambly vs. Quesnel*, 17 L. C. Rep. 264.

§ 8. *Of the effect of sheriff's sales.*

**706.** No adjudication is perfect until the price is paid, and then it conveys ownership from the time of its date.—Pot. P. C. 226-7.—Héric., Vte. des Imm., 118.—6 N. Den., 45-46.

**707.** The purchaser takes the immovable in the condition in which it is at the time of the adjudication, without regard to deteriorations or improvements subsequent to the seizure.—Pot. P. C., 218-9.

**708.** The adjudication is always without any warranty as to the contents of the immovable, but it conveys all rights which belong to it, and which the judgment debtor might have exercised, and also all active servitudes attached to it, even though they are not mentioned in the minutes of seizure.—*Contra*, 2 L. C. R., 194.—9 do, 108.—*Desjardins & Banque du Peuple*, 10 do, 325.

**709.** A sheriff's sale does not discharge immovables from servitudes with which they are charged.—C. S. L. C., c. 36, s. 27.

**710.** A sheriff's sale does not discharge property from hypothecs resulting from the commutation of seigniorial rights, excepting arrears accrued previously to the sale.—Nor does it discharge property from the right of emphyteusis, or from substitution not yet open, or customary dower not yet open, except when it appears on the face of the proceedings that there exists a prior or preferable claim.—

Pot. P. C. 227-8.—C. S. L. C., c. 44, ss. 49, 50, 54.—Héric. Vte. des Imm., pp. 47 *et seq.* 148 *et seq.*—7 N. Den., 223.

**711.** A sheriff's sale discharges property from all other real rights not mentioned in the conditions of sale.—Pot. P. C. 227.—Héric. Vte. des Imm., pp. 46-47, 59, *et seq.*—1 Fig. 779.—C. S. L. C., c. 85, s. 4, § 3.

**712.** A purchaser who cannot obtain the delivery of the property from the judgment debtor, must demand it of the sheriff, and upon the sheriff's return, or certificate of the refusal to deliver, the purchaser may apply to the court by petition, of which the debtor has received notice, and obtain an order commanding the sheriff to dispossess the debtor, and to put the purchaser in possession, without prejudice to the recourse of the latter against the debtor for all damages and costs resulting from his refusal.—C. S. L. C., c. 85, s. 27.

**713.** The proceedings upon this application are the same as upon that for a resale for false bidding.

§ 9. *Of the vacating of sheriff's sales.*

**714.** Sheriff's sales may be vacated :

1. At the instance of the judgment debtor, or of any creditor or other interested person.—If fraud or artifice was employed, with the knowledge of the purchaser, to keep persons from bidding.—If the essential conditions and for-

malities prescribed for the sale have not been observed ; but the seizing party cannot vacate the sale for any want of formalities attributable to himself or his attorney ;

2. At the suit of the purchaser.—If he is liable to eviction by reason of some customary dower, substitution, or other right from which the property is not discharged by sheriff's sale.—If the immovable differs so much from the description given of it in the minutes of seizure, that it is to be presumed that the purchaser would not have bought had he been aware of the difference.—Pot. P. C., 236, 240.—Héric. Vte. des Imm., p. 187.—1 Fig. 780.

**715.** The application must be made in the suit by a special petition, it must be served upon the seizing party and upon all other interested parties in the suit, and in other respects is subject to the rules of ordinary procedure. — The party who prosecuted the seizure and sale has a preferable right to contest any suit brought to vacate such sale ; and if he fails to do so within the prescribed delays, any other party may take up the contestation ; but the purchaser cannot, in any case, be condemned to pay the costs of more than one contestation.

**716.** Applications on behalf of the judgment debtor to vacate sheriff's sales must be made within the same delays as are prescribed for appealing from judgments of the superior court.—Pot., P. C., 125, 265.—

*Bowman vs. Dawson, & Dawson oppt., & O'Neil, mis en cause*, jugt. at Montreal, 26 Sept., 1845.—*Le Prestre*, 2 Cent., p. 142, no. 9.—4 *Henry's*, p. 63.

717. Grounds of nullity of a sheriff's sale may likewise be set up by the purchaser against whom an application is made for a resale for false bidding.

§ 10. *Of oppositions for payment.*

718. The prothonotary is bound to keep a register in which are entered all returns by the sheriff to writs of execution issued by the court, with mention of the amounts levied, of the oppositions made to the distribution thereof, [and of all claims filed as well in the hands of the sheriff as in the prothonotary's office.]—86 R. of P., S. C.

719. Oppositions for payment are necessary only for such claims as the registrar is not bound to insert in his certificate of the hypothecs charged upon the immoveable sold, as required by article 700.—[They are not necessary for claims resulting from municipal or school taxes, or assessments for the building or repairing of churches, parsonages, and church-yards; and it is sufficient that a statement of such claims, certified by the secretary-treasurer, or other authorized agent of the corporation, be filed in the hands of the sheriff or prothonotary. — Claims for arrears of *cens et*

*rentes*, or other rents constituted in their stead, may likewise be made by filing with the sheriff or prothonotary a statement thereof, under the signature of the seignior, or creditor, or of his agent.]

720. Oppositions for payment may be filed with the sheriff, if he has not yet made his return, or in the office of the prothonotary where the return is made, within six days after the return.—After this delay, they cannot be filed without permission of the court, and upon such conditions as it imposes.—83 R. of P.—C. S. L. C., c. 85, s. 4, § 3, and schedule A.

721. No costs are allowed the opposant upon oppositions for the payment of any of the claims mentioned in article 719.—27 & 28 Vic., c. 39, s. 6.

722. All oppositions for payment must contain an election of domicile, as prescribed in article 583.—87 R. of P.

723. When there is no opposition, and the certificate does not establish the existence of any hypothec, a judgment may be prepared by the prothonotary in the name of the court, upon application made in vacation, ordering the moneys to be paid to the seizing party, according to their sufficiency, and to the amount of his claim.—C. S. L. C., c. 83, s. 147.

§ 11. *Of collocation and the distribution of moneys.*

724. Between the sixth and the twelfth day after the

sheriff's return certifying that he has levied moneys, the prothonotary is bound to prepare a scheme of collocation or distribution, and to report the same.—90 R. of P.

If, however, the sheriff has been unable to return the certificate of hypothecs, the delay above prescribed is only reckoned from the filing of such certificate.

**725.** The report of distribution must mention the names and designation of the parties plaintiff, defendant and opposant, the amount levied, the person in whose hands it is, and the filing of the certificate of hypothecs.—1 Pig., 816.

**726.** Each collocation must form a separate article, in numerical order, and must mention whether the claim bears upon all the moneys to be distributed, or only upon the price of a particular immoveable, or part of an immoveable, the nature of the claim, and the date of the title and of its registration.—*Ibid.* 818.

**727.** In preparing the report of distribution the prothonotary must act according to the apparent rights of the parties, as shewn by the certificate of hypothecs filed by the sheriff, by the oppositions, claims, and the other documents forming part of the record, and in conformity with the rules contained in the civil code, in the titles *Of Privileges and Hypothecs*, and *Of Registration of real rights*, and with those hereinafter declared.—*Ibid.*

**728.** Law costs must, how-

ever, be collocated in the following order :

1. Costs of the report ;  
2. Commission on amounts deposited, and tax upon the amount levied, if any is due, and costs of seizure and sale, if they have not been retained out of the moneys levied ;

3. Costs incurred upon the writ of execution against immoveables, and such as may remain due upon the discussion of the moveables ;

4. Costs of cancelling hypothecs, or of establishing that they are extinguished ;

5. Costs of affixing seals, and of making any inventory required by law ;

6. Costs incurred, either in the court below or in appeal, upon proceedings incidental to the seizure and necessary to effect the sale of the immoveables ;

7. Costs of suit, as provided in article 606.

1 Pig., 810.—Pot., P. C., 232 ; Hyp. 451.—1 Couchot, 153.—Héric., c. 11, s. 1, nos. 3, 4.—Grenier, sur Edit de 1771, p. 371.—C. S. L. C., c. 37, s. 8.—C. N. 2101-4.—Eastern Townships Bank *vs.* Pacaud, 17 L. C. Rep. 126.

**729.** After law costs, those claimants must be collocated in their respective order who had some right of property in the immoveable sold, and who failed to set up their rights in due time by opposition to annul, opposition to withdraw, or opposition to secure charges, but have filed oppositions for payment ; after, however, deducting such debts as they may be

bound to pay and as have become payable in consequence of the sale of the immoveable, and the costs mentioned in the preceding article. — 2 Bour., 725-6; Pot., P. C., 236; Héric., 204; C.S.L.C., c. 85, s. 15, § 3.

**730.** Conditional hypothecs are collocated in the report according to their rank, but the amounts thereof are made payable to subsequent creditors whose claims are exigible, or, in default of these, to the defendant, upon good and sufficient sureties being given for the return of the money, in the event of the condition being fulfilled; and upon failure of the latter to give such security, within the delay fixed by the court, the amounts may be paid to the conditional creditors, upon their giving good and sufficient sureties to return the moneys in the event of the condition failing, or becoming impossible, and paying interest when the case requires it, to such persons as the court may order.—Pot., P. C., 234-5; 12 Guy. Rep. 433; 2 Bour. 722; Héric, 157; Pot., P. C., 263; Houyvet, 351.

[In the case of neither party furnishing the requisite security, the amount of the conditional claim may be placed in the hands of a sequestrator or depositary, upon whom the parties agree, or whom the court names of its own accord.]

**731.** When a prior claim is undetermined and unliquidated, the prothonotary, out of the disposable moneys, must reserve a sufficient sum to cover it; and such sum remains in

the sheriff's hands until the claim is liquidated, or until the court otherwise orders.—Houyvet, No. 193.—C. S. L. C., c. 36, s. 20.

**732.** Hypothecary claims due with a term of payment become exigible in consequence of the discussion and sale of the immoveable subject to them, and are beneficially collocated, but if they do not bear interest, the creditor is then collocated and receives the amount of his collocation on condition that he shall give, and after he has given, security to pay interest, until the term expires, to the subsequent creditors mentioned in the report; and if he is collocated for a part only of his claim, he is not liable for interest towards such subsequent creditors until the full amount of his claim is completed.—2 Bour., 722.—12 Guy, Rép. 433.—Lac., *vo.* Intérêts, no. 7. — *Et vide* Pot., *Condictio indeb.*, No. 152.—Héric. 157.

**733.** Claims for the capital of life-rents are determined and collocated according to articles 1914, 1915, 1916 and 1917 of the civil code.

**734.** Interest and arrears of rents preserved by registration of a claim are collocated in the same rank with such claim, up to the day on which the immoveable was adjudged.—8 Vic., c. 10 s. 35.—Lac. *vo.* Intérêt, No. 7.—Pot., P.C. 252-53.

[A creditor whose claim is registered is collocated in the same rank for such taxed costs only, as are incurred in



the court in which he originally obtained judgment for the recovery of his claim. His costs in appeal rank only according to the date of their registration.]

**735.** When several immoveables, or pieces or parcels of land separately charged with different claims are sold for one and the same price;—when a vendor's claim comes in concurrence with a builder's privilege; or—when a creditor has some preferential claim upon part of an immoveable, by reason of improvements or other cause;—and the disposable moneys are insufficient;—the prothonotary, if the record does not afford him sufficient data to perform the relative valuation himself, must suspend the distribution, and report the facts to the court.

**736.** Upon the application of one of the parties interested, after notice given to the others, the court orders experts to be named in the ordinary manner, in order to establish the respective values of the immoveables, pieces of land, or improvements, and the proportion which should be allotted to each out of the moneys to be distributed.—1 Pig., 810, 811.

**737.** The relative valuation being established upon the report of the experts, the case is sent back to the prothonotary, in order that he may proceed to determine the order of collocation, and the distribution of the moneys.

**738.** The registrar's certificate is *prima facie* evidence of the facts therein mentioned;

but it may be contested on the ground of error or fraud on the part of the registrar or in his books; and in such case the court may, if the ends of justice require it, order any interested person to be called in to answer the contestation, which must also be served upon the registrar. — Such interested parties are called in by being served with a rule of court; and this service may be either personal or at domicile, or by advertisement in newspapers if the persons are absent, in the same manner as upon ordinary summons.—C. S. L. C., c. 36, s. 19; 25 Vic., c. 11, s. 5.

**739.** Any party to the cause, or any person appearing voluntarily, may produce any acquittance or document of a nature to establish the discharge or extinction of a claim mentioned in the certificate of hypothecs, provided it is accompanied with such proof as would be required to justify the registrar in receiving it; and the court or judge may thereupon correct the certificate, or order it to be sent back to the registrar for correction, or else the registrar may transmit to the prothonotary a supplementary certificate in amendment to the former one.—25 Vic., c. 11, s. 5.

**740.** The registrar is deemed to be an officer of the court for all that concerns such certificate of hypothecs, as also for the taxation of his fees and expenses for services rendered in regard thereto.—*Ibid*, s. 6.

**741.** Any person interested in the distribution of moneys may, either in term or in vaca-

tion, even before contestation, cause the defendant or the creditor, or the debtor of any hypothecs mentioned in the registrar's certificate or in any opposition, or any other person having cognizance of the facts, to be examined before the judge, or, in his absence, before the prothonotary, in order to establish whether such hypothec has not been discharged, in whole or in part, or otherwise extinguished, or to prove any other fact material to the case; and any person thus examined is bound to disclose the existence of any receipt, account, document or writing, relating to such discharge or extinction, and to produce the same if it be in his power; and if it appears by the certificate of hypothecs, or by any opposition in the case, that such person is the creditor of the hypothec, his admissions constitute proof. A person thus examined cannot ask to be taxed as a witness if he is interested in the distribution, nor can he ask to be paid his travelling expenses before answering.—27 & 28 Vic., c. 30, s. 7.

If the hypothecary creditor of the person who was in possession of the immoveables in question at the commencement of the ten years next preceding the day of the judicial sale, or his legal representatives, cannot be found so as to be summoned and examined, then, upon the affidavit of any person swearing that he has reason to believe, and verily believes, that the hypothec has

been paid, discharged or extinguished, the court or a judge may order such creditor, or his representatives, to be summoned in the same manner as absentee defendants, and if such creditor or absentee defendants fail to appear, the distribution takes place in the same manner as if the hypothec had not been mentioned in the certificate of the registrar.

**742.** The parties are allowed eight days to contest the report of distribution, reckoning from the day on which it was entered on the posted list, if such day be a Monday, if not, the delay is reckoned from the Monday following.—92 R. of P.—2 L. C. R., 9.

**743.** The contestation may relate to the report itself and to the order or rank of the collocations, or it may go to the merits or substance of any of the claims beneficially collocated, and in this case the report becomes impliedly contested and stayed, to the extent of such contestation, without its being necessary to file a special contestation of the report to that end. The contestation in all cases must be accompanied with the reasons and documents in support thereof, if there are any, and a copy of such contestation must be left with the party interested, either at his elected domicile or at the prothonotary's office, if there is no such domicile.—4 L. C. R., 305.—1 Pig. 818.

**744.** Contestations of the report or of the order of colloca-

tion may be inscribed forthwith upon the roll for hearing, after notice given to the parties interested, without the necessity of any written answer to such contestation.

**745.** If the contestation of the report is maintained without being opposed by any party, the costs thereof are taken out of the moneys levied.—In the event of the costs being adjudged against one of the parties, the contesting party is still entitled to be paid them out of the moneys levied, saving to the creditor who is prejudiced by such collocation, his right to demand subrogation against the party condemned to pay them.

**746.** When a contestation of the report, or of a collocated claim is maintained, it is so maintained for the benefit of the mass of the creditors, and the court orders the prothonotary to prepare a new report according to the rights of the parties.—Houyvet, 409, 410.—1 Pig. 821.

**747.** [The right of contesting claims, oppositions or collocations belongs to whichever of the interested parties is first to use it.—A party whose claim or collocation is contested is not bound to answer more than one of several contestations founded on the same grounds, and he may apply to have such contestations united and the proceedings thereon conducted between him and the first contesting party, all notices required being served upon the other contesting parties, who have a *right to watch the proceedings*

and even to be put in the place of the party who has taken up the contestation, in the event of his withdrawal or of his neglect or refusal to proceed.]—1 Pig. 805.—Pot. P. C., 231.

**748.** Contestations upon the merits of oppositions or claims are subject to the rules of procedure which apply in ordinary suits.

**749.** After the delay for contesting the report has expired, the prosecuting party, or, upon his failure to do so within two days, any other party interested, may move for the homologation of the whole report, if there is no contestation, or of the part which is not contested or is not affected by the contestations, when these are only to a part.—Such motion cannot, however, be made until after notice thereof has been posted up in the prothonotary's office during at least four days.—94 & 95, R. of P.—1 Pig. 819.—Hério. 198.—C. S. L. C., c. 83, s. 147.

**750.** The homologation may be granted either by the court or by the prothonotary, in term or in vacation, unless there is a counter-application or a contestation, in which case the court alone can decide.\*—C. S. L. C., c. 83, s. 147.

**751.** [If in any distribution,

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\* A judgment homologating a report of distribution may be inscribed for revision and appealed from, even when no contestation has been filed.—Eastern Townships Bank *vs.* Pa-caud, 17 L. C. Rep. 126.

whether homologated or not, a creditor is collocated for any sum that is not due to him, the court, upon a declaration of the creditor to that effect, may order a supplementary distribution of the sum thus allowed him.—If the person thus collocated fails to declare what he has previously received, the judge may, upon the application of any party interested, and on production of an authentic discharge, order a supplementary distribution of the amount of such collocation.—If there be no authentic discharge the person thus collocated must be called in, upon application to the court or judge, and in such case the provisions of article 741 apply.—If the person collocated has no known domicile in Lower Canada, or if he is dead and his legal representatives are not certainly known, the judge may, upon a certificate of the fact, order them to be called in in the manner provided in article 68.\*

\* Form No. 38.

Lower Canada, { In the Sup-  
District of ———. } erior Court.  
(Date.)

Present: X. Y., Judge.

A.B., Plaintiff,  
vs.

C. D., Defendant,  
and

E.F., Collocated creditor.

It is ordered that the said E.F. (*his quality and domicile*) or his legal representatives do appear before this Court on

**752** When no opposition for payment has been filed and no claim appears by the registrar's certificate, or when all the parties consent, the moneys levied may, without the formality of a report of distribution, be adjudged by the prothonotary to the parties entitled to them, upon a motion to that effect made either in term or in vacation.—C. S. L. C., c. 83, s. 147, § 3.

§ 12. *Of sub-collocation.*

**753.** Any creditor of a person who is entitled to be collocated, or is beneficially collocated upon moneys levied, has a right to file a sub-opposition, demanding that, to the extent of his claim, the sum accruing to his debtor be not paid to such debtor, but to him. He cannot, however, exercise this right unless his debtor is insolvent, or his claim carries execution.—Pot., P. C., 235.—2 Pig., 737, 822.—1 L. C. R., 498.—10 do., 309.

**754.** Sub-oppositions must be served upon the party whose moneys are thus stopped.

**755.** The sub-collocation may follow the collocation, and be included in the general report, or it may form a separate report, and is subject to the same rules and formalities; but the costs thereof are borne by the creditor whose collocation

the ——— day of ———, in order to answer the contestation of his claim.

By order,

R.S., Prothonotary.

tion is thus opposed.—Pot., P. C., 235.

**756.** If a debtor fails to exercise his rights and claims, his creditor may intervene in the distribution in order to exercise the rights of such debtor, in the same manner, and with as little expense, as the debtor himself could have done.—*Ibid.*

§ 13. *Of the payment of moneys levied.*

**757.** At the expiration of fifteen days after the date of the judgment homologating a report of distribution, the sheriff is bound to pay to the parties entitled thereto the moneys which he has received.—25 G. III., c. 2, s. 29.

**758.** The amount of the collocation of a creditor mentioned in the registrar's certificate, and who has not filed an opposition, remains in the hands of the sheriff until such creditor or his legal representatives demand the same, and give a valid acquittance therefor.—C. S. L. C., c. 36, s. 22.

**759.** The sheriff, or other officer performing his functions, may be held by coercive imprisonment to the payment of the moneys by him levied and received.—C. S. L. C., c. 87, s. 24.

**760.** If the moneys levied, or a portion thereof remain in the hands of the purchaser, the judgment of distribution must be served upon him, and upon his failure to pay to the sheriff, or to the parties interested, *within fifteen days* from such

service, the amounts necessary to satisfy the claimants who have priority over him, the latter may demand the resale of the immoveable upon him for false bidding.

**761.** [Any party aggrieved by a judgment of distribution may seek redress by means of an appeal, or a petition in revocation, if there are grounds for it, whether he has appeared in the suit, or, his claim being mentioned in the certificate of hypothecs, he has not appeared.—Any creditor mentioned in the registrar's certificate, who has not appeared in the cause, may, moreover, within fifteen days, seek redress by means of an opposition to the judgment.]

**762.** [In the event of a judgment of distribution being reformed, or of the adjudication being set aside, or of the eviction of the buyer or his representatives by reason of any right from which the property was not discharged by the sale, whatever sums may have been unduly paid must be returned to the sheriff, and the parties are bound to pay back such moneys upon an order from the court to that effect.—Pot. P. C. 257.—Hélie, 294.]

## SECTION VI.

### *Of Abandonment of Property.*

**763.** Any debtor arrested under a writ of *capias ad respondendum*, may make a judicial abandonment of his property for the benefit of his creditors.—C. S. L. C., c. 87, ss. 12, 13.

**764.** This abandonment is effected by filing in the prothonotary's office a statement, sworn to by the defendant, and making known;

1. All the moveable and immoveable property of which he is possessed;

2. The names and addresses of all and each of his creditors, and amount of their claims, and the nature of each claim, whether privileged hypothecary or otherwise.—Such statement must be accompanied with a declaration by the debtor that he consents to abandon all his property to his creditors.—C. S. L. C., c. 87, s. 12.

**765.** [The debtor must give the plaintiff notice of the filing of the statement and of his declaration of abandonment.]

**766.** A debtor who has been admitted to bail is bound to file this statement and declaration within thirty days from the date of the judgment rendered in the suit in which he was arrested.

Any person condemned to pay a sum exceeding eighty dollars, exclusive of interest from service of process and costs, for a debt of a commercial nature, is likewise, after such moveable and immoveable property as he appears possessed of have been discussed, bound, upon being required to do so, to file a similar statement.\* —*Ibid.* ss. 12, 18.

**767.** If the debtor is in gaol he may file such statement and declaration at any time.—

*Ibid.*, s. 13.

**768.** Immediately after the filing of the statement and declaration of abandonment by the debtor, the prosecuting creditor may apply to the court or judge for the appointment of a curator to the property thus abandoned, after a notice, however, of such application has been given in the *Quebec Official*

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*dress and calling of the party)* defendant in the cause wherein the judgment, an authentic copy whereof is hereunto affixed, has been rendered.

Take notice that the undersigned, A. B., plaintiff in the said cause, hereby demands of you, under and by virtue of the provisions contained in article 766 of the Code of Civil Procedure of Lower Canada, a copy of which article is hereunto subjoined for your further information in the premises—that, within thirty days from the personal service to be made upon you of the foregoing certified copy of the said judgment, together with this notice, you do make and file the statement prescribed in the said article, in the manner and under the penalties therein set forth.

Done at —, this — day of —, 18—.

A. B., plaintiff.

(Here insert a copy of the said article.)

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\* Form No. 39.  
To C. D., of (state here the ad-

*Gazette*,\* fifteen days at least before presenting the same, calling upon the creditors to be present.†—*Ibid.*, s. 14.

\* 31 Vic., c. 13, s. 4, Q.

† Form No. 40, in connection with article 768.

Lower Canada, } In the Superior Court.  
District of— }

A.B., Plaintiff,

No.

*vs.*  
C.D., Defendant.

Public Notice is hereby given in pursuance of the provisions of article 768 of the Code of Civil Procedure of Lower Canada, that at the hour of— in the— noon of— the— day of— next (or instant, *as the case may be*,) or as soon after that hour as may be, at the Court House, at— (or, *as the case may be*,) at the chambers of the judge, (*sufficiently describing the same*), the said A. B., plaintiff in this cause, will apply to (*naming the court, and indicating whether application is to be made to such court, or to a judge thereof*,) for the appointment of a fit and proper person to be curator to the property, real and personal of the said C. D., defendant in this cause, who has made and filed in the office of the prothonotary of the said court, a statement under oath of the same, and also of his creditors and their claims, together with a declaration that he is willing to abandon his *property for the benefit of his*

769. [If the plaintiff fails to take steps for the appointment of a curator, the defendant or any other party in the suit may do so, with the observance of the same formalities.]

770. The curator appointed is bound to make his appointment known by an advertisement inserted during one month in the *Quebec Official Gazette*,\* and in any other newspaper that the court or judge may designate.† — If the curator

creditors—the whole as by the said code required.

And all persons, creditors of the said C. D., are hereby notified then and there to attend, to make to the said court (or judge, *as the case may be*) such representation or statement in the premises as they may see fit to make.

Given at—, this— day of—, 18—.

A. B., plaintiff.

\* 31 Vic., c. 13, s. 4, Q.

† Form No. 41.

Lower Canada, } In the Superior Court.  
District of— }

A. B. Plaintiff,

No.

*vs.*  
C. D., Defendant,  
and

E. F., Curator to the property and effects of the said defendant.

Public notice is hereby given, in pursuance of the provisions of article 770 of the Code of

fails to do so, the plaintiff or the defendant may cause such publication to be made.—*Ibid*, ss. 14, 15.

**771.** The curator takes possession of all the property mentioned in the statement, and administers it until it is sold in the manner hereinafter mentioned.—*Ibid*, s. 17, §§ 1, 2.

**772.** The curator has likewise a right to receive, collect and recover any other property belonging to the debtor, and which the latter has failed to include in his statement.—*Ibid*.—He may sell the moveables comprised in the statement, but the immoveables can only be sold under a seizure obtained at the instance of a creditor.

Civil Procedure of Lower Canada, that on the—— day of —— instant (or last past, as the case may be,) the said E. F., of (state here the address and calling of the curator,) was by order of (describe here the court or judge in question,) appointed to be curator to the property and effects of every kind, real and personal, of the said C. D., defendant in this cause, abandoned by the said C. D., for the benefit of his creditors—the whole as by the said code provided.—And all persons, creditors or debtors of the said C. D., are hereby notified and required to govern themselves in the premises accordingly.

Given at——, this—— day of——, 18——.

E. F., curator.

(Or A. B., plaintiff, or C. D., defendant, as the case may be.)

**773.** Within four months after the filing of the statement, when the debtor is in prison, and within two years after the filing of such statement when the debtor is at large under bail, it may be contested by any creditor, by reason :

1. Of the omission to mention property of the value of eighty dollars ;

2. Of any secreting by the debtor within the thirty days immediately preceding the institution of the suit, or since, of any portion of his property, with intent to defraud his creditors ;

3. Of fraudulent misrepresentations in the statement, in respect of the number of his creditors, or the nature or amount of their claims.—*Ibid*, s. 12 ; s. 13, § 2 ; s. 15.

**774.** The contesting party is bound, within the same delay, to prove his allegations by all legal means. The court may, however, prolong the delay for making such proof, but not beyond two months.—*Ibid*, s. 13, § 3.

**775.** The debtor is bound to attend before the court or before a judge, under the penalty hereinafter imposed, in order to answer all questions which may be put to him concerning such statement.—*Ibid*, s. 12, § 2 ; s. 15.

**776.** If the contesting party establishes any one of the offences mentioned in article 773, or if the defendant refuses to attend or to answer, as required under the preceding article, the court or judge may condemn him to be imprisoned



for a term not exceeding one year.—If the debtor so ordered to be imprisoned does not surrender himself or is not surrendered for that purpose according to such order, then the sureties are liable to pay the plaintiff the debt, together with interest and all costs.—*Ibid.* s. 12, §§ 2, 3; s. 13, §§ 2, 4; s. 15; s. 18.

**777.** If the allegations to the contestation are not proved, within the delays above mentioned, the court or judge may order the discharge of the debtor; and the latter cannot again be imprisoned for any debt due the plaintiff, or any other creditor, by reason of any cause of action anterior to his statement and declaration of abandonment; and in case of such imprisonment he may obtain his discharge either from the court or from a judge, upon petition and sufficient proof.—*Ibid.*, s. 13, § 3; s. 16, §§ 1, 2.

**778.** The abandonment of his property deprives the debtor of the enjoyment of such property, and gives his creditors the right to have it sold under execution for the payment of their respective claims.—Pot. P. C., 269.—C. N. 1269.

**779.** The abandonment of his property discharges the debtor from his debt to the extent only of the amount which his creditors have been paid out of the proceeds of the sale of such property.—Pot., P. C., 269.—C. S. L. C., c. 87, s. 20.—C. N. 1270.

**780.** Other special provisions concerning insolvent traders are contained in the

statute intituled: *The Insolvent Act of 1864* (now *the Insolvent Act of 1875* and amending acts.)

## SECTION VII.

### *Of Coercive Imprisonment.*

**781.** Coercive imprisonment cannot be carried into execution without a special rule granted by the court, after personal notice given to the party liable to it, unless such party absconds in order to avoid it.—C. P. C., 780.

**782.** In all cases of resistance to the orders of the court respecting the execution of the judgment by seizure and sale of the property of the debtor, as well as in all cases in which the defendant conveys away or secretes his effects, or uses violence or shuts his doors to prevent the seizure, a judge out of court may exercise all the powers of the court, and order the defendant to be imprisoned until he satisfies the judgment.—C. S. L. C., c. 83, ss. 133-4-5.

**783.** Coercive imprisonment cannot be granted against tutors or curators for any balance of account due by them, until after the expiration of four months from the service upon them of the judgment establishing such balance.—Ord. 1662, tit. 34, arts. 3, 10, 11.

**784.** Coercive imprisonment can only be effected in the time during which summonses may be served.—Pot. P. C., 259.—C. P. C. 781.

**785.** The debtor cannot be arrested :

1. On a legal holiday ;
2. In a place of public worship, during divine service ;
3. In a court of justice when the court is sitting, or before any privileged tribunal.—Pot. P. C., 260.—C. P. C., 781.

**786.** Notwithstanding what is contained in the two preceding articles, the court may order the arrest to be made on a holiday, or at any time, if it is established that the defendant is acting in such a manner as to escape it.—Pot., P. C., 259, 260.—C. P. C., 781.

**787.** Coercive imprisonment can only be executed in virtue of a writ or order from the court or judge, which may be addressed to the same officers, and is clothed with the same formalities, and contains the same matters of recital as those required in writs of execution.—C. S. L. C., c. 83, s. 141.

**788.** Whenever the person condemned to coercive imprisonment resides in another district, the writ must be addressed to and executed by the sheriff of such district.—*Ibid.* s. 209.

**789.** Coercive imprisonment is effected by arresting the debtor and placing him in custody of the keeper of the common gaol of the district in which the writ issued.—If there is no gaol in the district he must be imprisoned in the nearest gaol.—Pot. P. C., 261.—C. S. L. C., c. 110, s. 13.

**790.** Any person thus imprisoned, may upon petition to the court or to a judge, previously served upon the

creditor, and accompanied with an affidavit that he is not worth [fifty] dollars, obtain an order commanding the creditor to pay him, as an alimentary allowance during the period of his imprisonment, a sum not less than seventy cents and not exceeding one dollar per week.—C. S. L. C., c. 87, s. 6.

**791.** If however the debtor afterwards becomes owner of property exceeding in value the amount above mentioned, the creditor may be relieved from paying the weekly allowance.

**792.** The debtor may, if he has grounds for doing so, seek redress against such imprisonment, by petition or motion, to the court or judge, served upon the creditor.—C. P. C., 795.

**793.** The debtor may obtain his discharge :

1. By paying into the hands of the sheriff or of the prothonotary, the amount of the condemnation, in principal, interest and costs :

2. With the consent of, or a release from the creditor ;

3. Upon the failure of the creditor to pay in advance into the hands of the gaoler the alimentary allowance granted to him ;

4. By the abandonment of his property, as mentioned in the preceding section ;

5. By means of the discharge from liability, obtained under the provisions of law concerning insolvent traders ;

6. If he has completed his seventieth year.—Pot. P. C., 263-4-5.—1 Pig. 837 *et seq.*—27 and 28 Vic., c. 17, ss. 9, *et seq.*—C. P. C., 800.

**794.** Such discharge must, however, be ordered by a judge upon application, of which notice has been given to the prosecuting creditor.—Fig. *loc. cit.*—C. P. C., 805.

**795.** When the debtor has been discharged by reason of default of payment of the alimentary allowance, he is no longer liable to coercive imprisonment for the same debt.

## BOOK SECOND.

### TITLE FIRST.

#### OF PROVISIONAL PROCEEDINGS WHICH ACCOMPANY SUMMONS IN CERTAIN CASES.

##### GENERAL PROVISION.

**796.** A plaintiff may, in certain cases, simultaneously with the summons, or pending the suit and before judgment, have the person or the property of his debtor, or the object in dispute, placed in judicial custody, as explained in the following chapters; [subject to a right of action by the latter to recover damages, upon establishing by proof against the creditor a want of probable cause.]—C. P. L., 208, 237.

the prothonotary of the superior court, a writ of summons and arrest against the defendant, if the latter is about to leave immediately the province of Canada, or if he secretes his property with intent to defraud his creditors.—C. S. L. C., c. 87, s. 1.—C. P. L., 210.

**798.** This writ is obtained upon an affidavit of the plaintiff, his book-keeper, clerk, or legal attorney, declaring that the defendant is personally indebted to the plaintiff in a sum amounting to or exceeding forty dollars, and that the deponent has reason to believe, and verily believes, for reasons specially stated in the affidavit, that the defendant is about to leave immediately the province of Canada, with intent to defraud his creditors in general, or the plaintiff in particular, and that such departure will deprive the plaintiff of his recourse against the defendant; or upon an affi-

##### CHAPTER FIRST.

##### OF CAPIAS AD RESPONDENDUM.

##### SECTION I.

##### *Of the Issuing of the Capias.*

**797.** When the amount claimed exceeds forty dollars, the plaintiff may obtain from

affidavit establishing, besides the existence of the debt as above mentioned, that the defendant has secreted or made away with, or is about immediately to secrete or make away with his property and effects with such intent.—*Ibid.*—C. P. L., 212-4.—*Hurtibise vs. Lariche*, 13 L. C. J., 83.—7 L. C. J. 30.\*

\* Form of affidavit for capias.

Canada: } In the  
Province of Quebec, } Superior  
District of .... } Court.

A. B. of....., &c., Plaintiff,  
No. vs.

C. D., of....., &c., Defendant,

"A. B., of (insert residence and description) being duly sworn, doth depose and say:

"That he is the plaintiff in this cause, (or one of the plaintiffs, or the duly authorized agent of the plaintiffs in this behalf.)

"That the said defendant is personally (a) indebted to the said plaintiff in a sum exceeding forty dollars, to wit in the sum of..... for that [state the cause of indebtedness with sufficient explicitness as to time, place and circumstance, showing that the cause of action arose in this province. (b)]

"That this deponent is credibly informed, to wit by [name

(a) Alexander vs. McLachlan.  
—1 L. C. J. 5.

(b) Brisson vs. McQueen.—  
7 L. C. J., 70.

799. The writ may also be obtained if the affidavit establishes, besides the debt, that the defendant is a trader, that he is notoriously insolvent, that he has refused to arrange with his creditors or to make an assignment of his property to them or for their benefit, and that he still carries on his

informant (c)] and hath every reason to believe and doth verily believe, that the said defendant is about to leave immediately the confines of the provinces of Quebec and Ontario, (formerly constituting the province of Canada) with intent to defraud his creditors in general, and the plaintiff in particular (d) [or if the cause of belief is other than direct information add, and my reasons for so believing are (e) state reasons fully.]

"That such departure (f) will deprive the said plaintiff of his recourse against the said defendant, and he will lose his remedy and sustain damage.

And deponent hath signed.

Sworn, taken and acknowledged before me at....., this ..... day of..... A. D.....

(c) Chrétien vs. McLane, 3 Rev. de Leg. 348.—Cameron vs. Brega, 10 L. C. J., 88.—Milligan vs. Mason, 17 L. C. J., 159.

(d) Lamarche vs. Labrecq.  
1 L. C. R., 215.

(e) Milligan vs. Mason, 17 L. C. J., 159.

(f) Boyd vs. Freer, 15 L. C. J., 109.

trade\*—C.S.L.C., c. 83, s. 47 ; c. 87, s. 9.

Or if the cause of *capias* be secreting and not absconding, then insert, instead of the paragraph commencing "That this deponent is credibly informed," the following:—

"That the said defendant has secreted and made away with, (or is about immediately to secrete and make away with, — or has secreted and made away with a part, and is about immediately to secrete and make away with the remainder of) his property and effects with intent to defraud his creditors in general and the plaintiff in particular, and the reasons of said deponent for so believing are (y)" (*state reasons fully.*)

(y) *Bell vs. Vigneault* and *Houlston*, 5 Rev. Leg. 697 ; but see *Casavant vs. Patenaude*, 3 Rev. Leg., 446.

\* When both parties are domiciled in Upper Canada, the affidavit must also declare that the defendant does not possess within the limits of Upper Canada any immoveable property out of which the plaintiff can reasonably expect to be paid.—C. S. L. C., c. 87, s. 2.—3 L. C. R., 100.—This writ may issue on the ground of secretion committed previously to, after, or concurrently with the making of an assignment under the Insolvent Act of 1864.—*Stevenson vs. McOwan*, 17 L. C. Jurist, 46.

**800.** The writ of *capias* may likewise be obtained by any creditor having an hypothecary or privileged claim upon an immoveable, upon an affidavit establishing that his claim exceeds forty dollars, and that the defendant, whether he is the original hypothecary debtor or simply the holder of the property, is, with the intent of defrauding the plaintiff, damaging, deteriorating or diminishing the value of the immoveable, or is about to do so himself or by others, so as to prevent the creditor from recovering the whole or any part of his claim, to the amount of forty dollars, as provided by chapter 47 of the consolidated statutes for Lower Canada.—C. S. L. C., c. 47, s. 3.

**801.** [If the demand be founded upon a claim for unliquidated damages, the writ of *capias* cannot issue without a judge's order, after examining into the sufficiency of the affidavit ; and the affidavit in such case must state the nature, and, moreover, amount of the damages sought, and the facts which gave rise to them, and the judge may, in his discretion, either grant or refuse the *capias*, and may fix the amount of the bail, upon giving which the defendant may be released.]

**802.** The writ of *capias* may be joined with the writ of *summons*, or may be issued afterwards as an incident in the cause. In the latter case it must be accompanied with a summons for a fixed day to show cause why the writ should

not be declared valid and joined with the principal demand.—The writ may also issue after judgment has been obtained for the recovery of the debt.

**803.** The amount for which the writ of capias has issued, and the name of the person who made the affidavit must be endorsed upon the writ.—10 & 11 Geo. IV., c. 26.

**804.** [It is not necessary that the declaration or statement of the demand should be served upon the defendant at the time of his arrest, but it suffices to leave a copy of it either with him, or at the office of the prothonotary, within the [three days which follow the service].—C. S. L. C., c. 83, s. 57.

**805.** Saving the exceptions contained in articles 2272 and 2273 in the Civil Code, a writ of capias cannot issue:

1. Against priests or ministers of any religious denomination whatever;

2. Against septuagenarians;

3. Against females.—C. S. L. C., c. 87, s. 7, § 1.

**806.** It cannot issue for any debt created out of the province of Canada, nor for any debt under forty dollars.—*Ibid.* § 2.—6 L. C. J., 312.

**807.** The affidavit required in the above articles may be made by one person only, or by several persons swearing each to a portion of the necessary facts, and it may be received and sworn to before a judge of the superior court, or a commissioner of the superior court, or by the prothonotary who certifies the writ of

capias.—C. S. L. C., c. 83, s. 6; c. 87, s. 1.

**808.** The superior court alone has jurisdiction in matters of capias.—12 Vic., c. 38, ss. 32, 47.—C. S. L. C., c. 78, s. 5.

**809.** When the capias is issued by the prothonotary of the superior court it is addressed to the sheriff or bailiff of the district where it is to be executed.—12 Vic., c. 38, s. 47.—C. S. L. C., c. 83, s. 3, § 2.—33 Vic., c. 17, s. 1, Q.

**810.** It may be issued by a clerk of the circuit court, in which case it is addressed to the sheriff or to any bailiff of the district in which it is to be executed.—12 Vic., c. 68.—C. S. L. C., c. 83, s. 6.

**811.** The clerk of the circuit court acts in such case as an officer of the superior court, and the writ of capias must be worded throughout as if it was issued by the prothonotary.—*Ibid.*

**812.** In all cases in which a writ of capias may issue, a warrant of arrest may be granted by a commissioner of the superior court, and be addressed by him either to the sheriff or a bailiff, or any other peace officer in his vicinity.—C. S. L. C., c. 83, s. 53.

**813.** Such warrant is in the name of the commissioner who grants it; it orders the arrest of the person therein designated, and his delivery over to the gaoler of the district, who is commanded to keep him in his custody during forty-eight hours, and no longer, unless before the expiration

time the plaintiff has obtained and caused to be executed against such defendant a writ of capias in the ordinary course.\*—9 Geo. IV., s. 27.

\*Form No. 42, in connection with articles 812, 813.

*Affidavit for warrant of arrest.*

A. B., of —, &c., being duly sworn, doth depose and say that C. D., of —, is personally indebted to — in a sum exceeding forty dollars, to wit: in the sum of —.

That this deponent is credibly informed (*by—name informant, Malligan vs. Mason, S. C. Review, Montreal, 30 Dec., 1872*), hath every reason to believe, and doth verily and in his conscience believe, that the said — is immediately about to leave the province of Canada (*allege specially the reasons which lead to the belief that the defendant is about to leave the province of Canada*), whereby the said —, without the benefit of a warrant of attachment against the body of the said —, may be deprived of — remedy against the said —: and this deponent hath signed.

Sworn before me, — this — day of —.

Form No. 43, in connection with articles 812, 813.

*Warrant to arrest the person.*

Canada, Province of Quebec,  
District of —.

A. B., Esquire, commissioner  
of the superior court in the

814. The debtor cannot be detained in prison in virtue of such warrant any longer than forty-eight hours.—*Ibid*, s. 54.

815. The commissioner granting such warrant must, without delay, transmit a duplicate of it, together with the original affidavit upon which it was granted, and a certificate of his proceedings to the prothonotary of the superior court of the district, who must file the same and keep them as part of the record in the case.—*Ibid*, s. 55.

district of —. To —, and to the keeper of the common gaol of the said district, greeting:

I command you, that you take — of — in the county of — in the district of — if he be found in — and him, with all due diligence, convey to the common gaol of the said district, and deliver to the keeper thereof, together with this warrant; and I do hereby command you, the said keeper, to receive the said — and him safely keep for the space of forty-eight hours, and no longer, unless, before the expiration of that time, a writ of *capias ad respondendum* be duly served upon him, to compel him to be and appear personally in the superior court for the said district on the day of the return of such writ, to answer — of — of a certain debt, interest and costs, amounting to the sum of —.

Given under my hand and seal, this — day of — in the — year of her present majesty.

## SECTION II.

*Of the Execution of Writs of Capias.*

**816.** If the writ of capias is addressed to a bailiff, the bailiff who is charged with it arrests the defendant and delivers him over, together with the writ to the sheriff, who thereupon becomes responsible.—C. S. L. C., c. 83, s. 6, § 2.

**817.** If the writ of capias is addressed to the sheriff he is then bound to execute it or to cause it to be executed by his officers.

**818.** The sheriff is bound to keep the defendant in the common gaol of the district, until the latter gives security or is discharged as hereinafter provided.—*Ibid*, c. 87, s. 1.

## SECTION III.

*Of the Contestation of Writs of Capias.*

**819.** Upon a petition presented to the court, or to a judge in term or in vacation, the defendant may obtain his discharge by establishing that he is not liable to be imprisoned, or by showing that the essential allegations of the affidavit upon which the capias is founded are false or insufficient.—*Ibid*, ss. 8, 9 §§ 1, 2.—c. 47, s. 3, § 3.—C. P. L. 218.\*

\* The defendant must present simultaneously all petitions he intends to, whether in law or fact.—*Sutherland vs. Phillips*, superior court, Montreal, Dec., 1874.—Maintained in appeal 1875.

**820.** In order to decide upon this incidental proceeding the court or judge may order the immediate return of the said writ of capias, and of the proceedings had upon it, although the day fixed for the return should not yet be arrived.—1 L. C. R., 143.

**821.** If the contestation is merely as to the sufficiency of the allegations of the affidavit, the judge or the court may dispose of it, after hearing the parties.—But if the contestation is founded upon the falsity of the allegations, issue must be joined upon the petition of the defendant, in the ordinary course and independently of the contestation upon the principal demand, unless the exigibility of the debt depends upon the truth of the allegations of the affidavit, in which case the writ may be contested together with the merits of the case.—10 L. C. R., 241.

**822.** A defendant whose application to be discharged is rejected may appeal from the decision.—3 L. C. J., 292.

**823.** [If the court or judge orders the defendant to be discharged, the plaintiff may obtain a suspension of the order, by declaring immediately that he intends to have the decision reviewed and depositing the amount required by article 497. He may likewise appeal from the judgment in review, if he declares immediately his intention of doing so, and causes the writ of appeal to be served within three juridical days from the rendering of the



judgment in review.\* If the plaintiff fails to comply with these formalities the defendant is discharged.]

#### SECTION IV.

##### *Of Discharge upon Bail.*

**824.** The defendant may obtain his discharge upon giving two good and sufficient sureties that he will not leave the province of Canada, and that, in case he does so, such sureties will pay the amount of the judgment that may be rendered, in principal, interest and costs, or the amount fixed by the judge in the case of article 801.—But this bail cannot be received after the expiration of the eighth day from the day fixed for the return of the writ of *capias*, unless with leave of the court, expressly granted upon sufficient cause shown.—C. S. L. C. c. 87, s. 3.

**825.** The defendant may also obtain his discharge at any time before judgment, by giving good and sufficient sureties to the satisfaction of the court, or judge, or prothonotary, that he will surrender himself into the hands of the sheriff, when required to do so by an order of the court or

judge, within one month from the service of such order upon him or upon his sureties, and that in default they will pay the amount of the judgment in principal, interest and costs, or the amount fixed by the judge in the case of article 801.—*Ibid*, s. 10.

**826.** This bail is offered after a notice served upon the plaintiff or his attorney, with one intermediate day's delay.

**827.** The sureties offered must, if required, justify their sufficiency upon oath, but need not justify upon real estate.—*Ibid*, s. 10, § 2.

**828.** A defendant arrested upon a *capias* may obtain his provisional discharge by giving good and sufficient sureties to the sheriff, to the satisfaction of the latter, before the return day of the writ, that he will pay the amount of the judgment that may be rendered upon the demand, in principal, interest and costs, if he fails to give bail pursuant to article 824 or to article 825.\*—*Ibid*, s. 22,

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\* On cause shown, the defendant, after a judgment maintaining a *capias*, and condemning him to pay the debt, will be permitted to put in bail or security that he will surrender himself in terms of the law in place of the bail given to the sheriff. He will also after judgment, on showing cause, be permitted to file the statement of his affairs required by C. S. L. C., c. 87, s. 12, (arts : 763 *et seq.* of this code), and plaintiff's petition

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\* The writ of appeal may be taken out on a *precipe* without a petition. *Obiter dictum* of full court of appeal in *re Canadian Bank of Commerce vs. McMinn*, Montreal, 12th Dec., 1874.

and form No. 44.—Henderson  
vs. Lamoureux.

for imprisonment will be dismissed in consequence of such permission. Henderson vs. Lamoureux, 17, L. C. R. 414.

Form No. 44, in connection  
with article 828.

*Form of Bail-bond.*

Know all men by these presents, that we, (*name here the defendant and his bail,*) are held and firmly bound to (*name here the sheriff,*) sheriff of the district of —, in Lower Canada, in the sum of (*state here the amount sworn to and endorsed on the writ, with twenty-five per centum added for interest and costs,*) to be paid to the said sheriff, or his certain attorney, executors, administrators or assigns; for which payment, to be well and faithfully made, we bind ourselves, and each of us by himself, for the whole and every part thereof, and the heirs, executors, and administrators of us, and every of us, firmly by these presents, sealed with our seals, and dated this — day of —, in the — year of the reign of our sovereign lady Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and in the year of our Lord one thousand eight hundred and —

Whereas the above bounden (*name here the defendant*) has been by the said sheriff arrested under and by virtue of a

829. The sheriff in such case is responsible only for the

certain writ sued out of the superior court in the district of —, at the instance of (*name here the plaintiff,*) and to the said sheriff in due course of law delivered;

The condition of this obligation is such that if the said (*name here the defendant*) do, on (*state here the return day of the writ,*) or at any time previously thereto, or within eight days thereafter, give good and sufficient security to the satisfaction of the superior court in the said district or of any one of the judges of the said court, that he, the said (*name here the defendant,*) will surrender himself into the custody of the said sheriff whenever required so to do by any order of the said court, or of any judge thereof, made as by law provided, or in default thereof, will pay to the said (*name here the plaintiff,*) the debt for which he the said (*name here the defendant,*) has been arrested as aforesaid, with interest and costs; or do, on (*state here the return day of the writ,*) or at any time previously thereto, or within eight days thereafter, put in special bail, as by law provided, to the action wherein the said writ has been sued out as aforesaid, then this obligation shall be void and of no force, but otherwise shall stand in full force, vigor and effect.

Signed, sealed and delivered in presence of —

sufficiency of the sureties at the time when bail was given.—*Ibid.*\*

**830.** He may free himself by offering an assignment of the bail-bond he has taken.—This assignment may be effected by simply endorsing his name upon the bail-bond.—*Ibid.*, s. 3.—Asselin & Mason, judgt 9 Nov., 1848.

**831.** The sureties may at any time arrest the defendant and surrender him into the hands of the sheriff and thus discharge themselves from their bond.—C. S. L. C., c. 87, s. 5.

**832.** [The sheriff, however, is not bound to receive the defendant, without a written requisition to that effect signed by the sureties or by one of them, or by their authorized attorney.—The requisition must contain the title of the court, the names of the parties to the suit, and of the sureties, and must require the sheriff to take the debtor into his custody; and it is the duty of the sheriff to give the sureties a certificate of such surrender.]

**833.** [If the sureties apprehend resistance, then upon an affidavit of one of them, alleging their suretyship, sworn to before a judge, the prothonotary, a commissioner of the superior court, or a justice of the peace of the district in which the debtor then is, and upon a requisition to that effect written upon the back of an

affidavit, any bailiff or constable may arrest the debtor with such forcible assistance as may be necessary, and hand him over to the sheriff.]

## CHAPTER SECOND.

### OF ATTACHMENT BEFORE JUDGMENT.

#### SECTION I.

##### *Of Simple Attachment.*

**834.** A creditor has a right, before obtaining judgment, to attach the goods and effects of his debtor:

1. In the case of the *dernier équipour*; \*

2. In all cases where, as plaintiff, he produces an affidavit establishing: that the defendant is personally indebted to him in a sum exceeding five dollars, that the defendant absconds or is about immediately to leave the province or is secreting or is about to secrete † his property, with the intent to defraud his creditors and the plaintiff in particular; or that the defendant is a trader, that he is notoriously insolvent, that he has refused to arrange with his creditors

\* The *dernier équipour* must make the usual affidavit to obtain a seizure.—*Plante vs. Clarke*, 17 L. C. Rep., p. 75.

\* As to security by sheriff, see 36 Vic., c. 15, Q

† 35 Vic., c. 6, s. 18, Q.

or to make an assignment to them or for their benefit, and that he still carries on his business; and, in either case, that the deponent verily believes that without the benefit of the attachment the plaintiff will lose his debt or sustain damage.—C. S. L. C., c. 83, ss. 46-7, 58, 175.—Pot. Proc. civ. 180-1.—C. P. L., 240.\*

**835.** [If the claim is founded on unliquidated damages, the writ of attachment cannot issue without the order of a judge after examining into the sufficiency of the affidavits, which, moreover, must state the nature and amount of the damages claimed and the facts which gave rise to them, and the judge may in his discretion either grant or refuse the writ, and fix the amount of the bail upon giving which the property may be released.]

**836.** Simple attachment is effected by means of a writ addressed, when in the superior court, to the sheriff or *bailiff* † of the district in which it is to be executed, or, when in any other court, to any bailiff, requiring such sheriff or bailiff to seize the moveables and effects of the defendant,

and to summon him to appear on a day fixed, at the office of the prothonotary or clerk, to answer the demand and show cause why the attachment should not be declared valid.—C. S. L. C., c. 83, s. 5.

**837.** The amount of the plaintiff's claim must be endorsed upon the writ, or the sum for which security may be given.—10 & 11, G. IV., c. 26.—C. S. L. C., c. 83, s. 52.

**838.** The writ is issued by the prothonotary or by the clerk of the circuit court, as the case may be, upon a written requisition from the plaintiff.—It may be either in the French or English language.—It is tested in the same manner as writs of summonses.—C. S. L. C., c. 83, s. 1.

**839.** The writ may also be issued for the superior court, according to the amount claimed, by any clerk of the circuit court, who, in such case, may likewise receive the necessary affidavit.—*Ibid.* s. 6, § 4.

**840.** The provisions contained in articles 810 and 811 concerning writs of *capias*, apply likewise to simple attachment.

**841.** The seizure of the goods of the defendant is effected in the same manner as upon the execution of a judgment.—Pot. Proc. Civ. 180-1.—The sheriff or bailiff may make the seizure in another district if the debtor has conveyed his property there or has withdrawn there himself.

**842.** A warrant of attachment may also be issued, in

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\*This article has not changed the law with respect to the affidavit as previously in force. It is sufficient in the affidavit to state that the defendant is about to leave Lower Canada, or the Province.—*Beaubien vs. Linklater*. 17 L. C. R., p. 406.

†33 Vic., c. 17, s. 1, Q.

the case of article 834, by any commissioner of the superior court, addressed to the sheriff of the district where the warrant is to be executed, or to the bailiff or peace officer nearest to his residence, commanding him to seize and detain the effects of the debtor.—C. S. L. C., c. 83, s. 53.

843. This warrant of attachment is in the name of the commissioner who issues it; it orders the moveables and effects of the defendant to be attached, with the ordinary formalities of seizures, and that they be kept and detained for the period of twelve days from the seizure, and no longer, unless before the expiration of such twelve days a writ of attachment, pursuant to the above provisions, issues from the proper court.\*—*Ibid*, s. 54 and form D.

\* Form No. 45.—*Affidavit to obtain Warrant of Attachment.*

A. B., of— being duly sworn, doth depose and say that C. D., of— is indebted to—of— in a sum exceeding forty dollars, to wit: in the sum of—. (*Here state succinctly the cause of indebtedness.*)

That this deponent is credibly informed and hath every reason to believe, and doth verily and in his conscience believe, that the said—is now about immediately to secrete— estate, debt and effects, and do—abscond and do—intend suddenly to depart from

844. The effects so seized cannot be detained for a longer period than twelve days under such warrant of a commissioner.—*Ibid*.

Lower Canada, with an intent to defraud the said—and—creditors.

This deponent further saith, that he doth verily believe, that without the benefit of a warrant of attachment— against the said— the said—will lose his debt and sustain damage, and hath signed.

Sworn before me, at—this—.

Form No. 46, in connection with article 843.—*Warrant of Attachment.*

A. B., Esquire, commissioner of the Superior Court in the district of—.

To—greeting:

I command you, at the instance of—, to attach—of and belonging to—, if the same shall be found in the—, to the value of—and the said—keep and detain in your charge and custody for the period of twelve days, from the date hereof, and no longer, unless before the expiration of twelve days, the said— shall be seized by writ of attachment issuing from the superior or circuit court (*as the case may be*) at — at the suit of the said—.

Given under my hand and seal, at—this—day of—in the—year of the reign of her majesty.

**845.** The commissioner who granted such warrant must, without delay, transmit a duplicate thereof, together with the original affidavit upon which the warrant was granted and a certificate of his proceedings to the prothonotary, or clerk of the circuit court, who must file and keep the same as part of the record in the case. —*Ibid*, s. 55.

**846.** When in the superior court the writ or the warrant is addressed to a bailiff or any other officer than the sheriff, such bailiff or other officer is bound to make a return of his proceedings to the sheriff, and to deliver to him the effects seized, in order that they may be disposed of by the court according to law.\* *Ibid*, s. 6, § 2.

**847.** The sheriff or bailiff may also demand in advance from the party suing out the writ or his attorney *ad litem*, such sum as may be deemed sufficient by the judge or the prothonotary of the superior court from which the writ issued, for the safe keeping of the effects seized. *Ibid*, s. 49.

**848.** The sheriff or bailiff

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\* The sheriff or bailiff is not bound to execute a writ of simple attachment against any raft or timber until he has been furnished with two good and sufficient sureties to indemnify him and hold him harmless against any demand for damages and costs that may result from such attachment.—C. S. L. C., c. 83, s. 51.

may renew such demand as often as the sum so advanced is expended, by presenting a petition, of which notice has been given to the party seizing or his attorney *ad litem*; and if the amount fixed by the judge or prothonotary is not paid within twenty-four hours, the seizure is discharged, and the sheriff or bailiff is exonerated from any liability whatever. *Ibid*, s. 49, § 2.

**849.** The writ of attachment must be returned with an inventory of the seizure, and a certificate of service both of the writ and of the declaration, in the same manner as upon a writ of *capias*.

**850.** A copy of the writ of attachment must be left with the defendant, as well as a duplicate of the inventory of the seizure, as soon as it is completed. As regards the declaration, it may either be served at the same time as the writ, or within the [three days which follow the seizure], by leaving a copy thereof either with the defendant or at the prothonotary's or clerk's office. *Ibid*, s. 57.

**851.** The effects seized must, in every case, be placed in the custody of a responsible person offered by the defendant, or in default of such offer, in the custody of a responsible person appointed by the sheriff, bailiff, or other officer making the seizure, subject to the provisions respecting guardians and depositaries in cases of executions against moveables. Pot. P. C., 180.

**852.** If the defendant is

absent from Lower Canada, or conceals himself so as to prevent the service of the writ of attachment, the court, or a judge upon proof of the fact by one credible witness, may dispense with the service, and order the defendant to be summoned in the manner provided in article 68.—C. S. L. C., c. 83, s. 58.

**853.** A defendant whose effects have been seized may get them restored to him by the sheriff within the forty-eight hours from the service of the inventory of seizure :—1. By depositing with the sheriff, bailiff or other officer charged with the writ, the amount endorsed on the writ and costs ; or 2. By giving the sheriff, bailiff, or other officer charged with the writ, who is bound to accept them, good and sufficient sureties, who justify under oath to the amount endorsed upon the writ with interest and costs, that he will satisfy the judgment that may be rendered.—In default of his doing so within the specified delay the effects remain under seizure to satisfy the judgment, unless the court or a judge orders otherwise.—*Ibid.*, s. 52.

**854.** Simple attachment may be contested in the same manner as writs of *capias*.

## SECTION II.

### *Of Attachment by Garnishment.*

**855.** In all the cases where a writ of simple attachment *may be granted* as hereinabove

explained, a creditor may also attach any moveable property belonging to his debtor which may be in the hands of third persons, and also whatever sums they may owe him, subject to the restrictions mentioned in articles 558 and 628.—C. S. L. C., c. 83, ss. 46-7.—C. P. C. 558.

**856.** This attachment is effected by means of a writ commanding the attachment in the hands of the garnishees of whatever sums of money, things or effects they have or may have belonging or due to the defendant, ordering the garnishees not to dispossess themselves thereof without an order of the court, and to appear at the office of the prothonotary or clerk to make their declaration, and summoning the defendant to answer the demand of the plaintiff.

**857.** It may be addressed either to the sheriff or to a bailiff, when it issues from the superior court, and in any other case to a bailiff.—*Ibid.*, ss. 3, 133. It can also be addressed to the sheriff of such other district. See note to art. 48 *ante*.—33 Vic., c. 17, s. 1, Q.

**858.** It is clothed with all the formalities required for ordinary writs of summons, and is subject to the provisions of articles 838, 839, 840, 842, 845, 846, in so far as they can be applied.

**859.** A statement of the amount for which the attachment is made or authorized is, moreover, endorsed upon the writ.—C. P. C., 559.

**860.** The provisions con-

tained in articles 614, 615, 616, 617, 618, 619, 620, 622, 623, 624, 625, 629, 630, and 631, are also applicable to cases of attachment by garnishment before judgment. (V. articles 56-7.)\*

**861.** If the declaration of the garnishee is not contested, the court or judge, in rendering judgment upon the principal demand, adjudicates also upon the attachment and the declaration of the garnishee.—C. S. L. C., c. 83, s. 135.—C. P. C., 576.

**862.** The plaintiff or the defendant may contest the declaration of the garnishee, upon leave of the court to that effect.—Such contestation is served upon the garnishee, together with a summons to appear on a day fixed to answer the same, the ordinary delays for summoning being observed.—4 Will. IV, c. 4, s. 4.—C. S. L. C., c. 83, s. 136, § 2.

**863.** In other respects the contestation is subject to the rules of ordinary procedure.

**864.** If the plaintiff fails to contest the declaration of the garnishee within eight days after the principal judgment, he is foreclosed from doing so, unless the delay is

extended by the court.—98 R. of P.

**865.** The defendant may contest the attachment made upon him or in the hands of a garnishee, in the manner provided for cases of *capias*.—12 L. C. R. 265.—6 L. C. R., 473.—7 L. C. J. 48.

### CHAPTER THIRD.

#### OF ATTACHMENT IN REVENDIGATION.

**866.** Whoever has a right to revendicate a moveable may obtain a writ for the purpose of having it attached, upon production of an affidavit setting forth his right and describing the moveable so as to identify it.—This right of attachment in revendication may be exercised by the owner the pledgee, the depositary, the usufructuary, the institute in substitutions, and the substitute.—Pot. P. C. 182.—Gu. Rep. *vo.* Revendication, 619.—C. P. L., 269.

**867.** The writ of attachment in revendication orders the seizure of the effects revendicated, and that they be placed in the hands of guardians until judgment is rendered upon the revendication.—[The name of the person upon whose affidavit the writ issues is mentioned upon the back of the writ.]

**868.** The formalities prescribed in articles 809, 836, 838, 847, 848, 849, 850, and 851, are observed in attachments in revendication in so far as they can apply.

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\* As to service of attachment by garnishment upon treasurer of province, or treasury deposit agents, *v.* 35 Vic., c. 5, s. 23, *vis.*, by service on agent in ordinary course, and by mailing copy of writ to treasurer.



**869.** The defendant upon a demand in revendication may have the effects returned into his possession upon giving good and sufficient sureties that he will produce them when required, which he is in such case bound to do in the same manner as any judicial sequestrator.—*Guy. vs. Revendication*, 620.—*Nye vs. Bigelow*, Montreal, 30 May, 1846.—*Porter vs. Ferrier*, 17 Feb., 1852.—*Knapp, vs. French*, 6 Dec., 1852, *contra*.—Nevertheless the court or judge may, according to circumstances, grant possession of the effects to the plaintiff, subject to the same conditions.

**870.** Before the effects are delivered to the party applying for them, the other party may require an inventory thereof to be made, establishing the condition of the effects, their description and their value, in order to settle the amount of the security to be given; and this is done by experts named in the ordinary course of procedure.

**871.** If neither of the parties applies for the effects seized they remain in the custody of the guardian appointed; or else, at the request of either of the parties, the court or the judge may, if they are of a nature to produce fruits, order them to be placed in the hands of a sequestrator.

**872.** If the things seized are of a perishable nature or liable to deteriorate during the pendency of the suit, the court or judge may order them to be sold and the proceeds of the

sale to be deposited in the office of the prothonotary or clerk.—1 Couchot, 123.—C. P. L., 261.

## CHAPTER FOURTH.

### OF ATTACHMENT FOR RENT.

**873.** The owner or lessor may cause the effects and fruits in or upon the house, premises or land leased and subject to his privilege, to be seized for the rent, farm dues, or other sums payable in virtue of the lease. He may likewise follow and seize in recaption, even for amounts not yet payable, the movables and effects which were in the house or premises leased, when they have been removed without his consent; but he must do so within eight days after their removal; *but, shall be subtracted from the sale, the movables and effects mentioned in article 556.*—41 Vic., 1878, c. 12, s. 1, Q.—*Pot. P. C.*, 182.—*Laurin vs. Kelly*, Montreal, 25 April, 1849.—[An attachment in recaption must be served upon the new lessor, who must also be summoned to show cause against its execution.]

**874.** The provisions contained in article 841 apply likewise to attachments for rent or farm dues.

**875.** Effects attached for rent or for farm dues cannot, without the consent of the plaintiff, be left in the custody of the defendant, unless he gives sureties to the satisfaction of the sheriff or bailiff for

duction of the effects, each sureties incur the obligations and are liable same penalties as guardians.—C. S. L. C., c. 17.

## CHAPTER FIFTH.

### JUDICIAL SEQUESTRATION.

All demands for sequestration are made by petition to the court [or to a

It may also, according to circumstances be ordered by the court without command by the parties. 1. 123.—Ord. 1667, tit. 12.—1 Pig. 117, 170, 388.—Guy. *vs.* Reven-1, 621.—Imbert, Enchiridion, pp. 195-6.

The judgment of sequestration commands parties to appear before the court or before a judge, ordered, to name a sequestrator, and if the parties cannot, the court, or judge, one of his own accord.—67, tit. 19, art. 4.

The sequestrator must appear before the judge or notary to administer faithfully the things when he is appointed deponent.

He is put in possession of the things, who draws up a statement containing a description of the property sequestrated.

This statement should be signed by the bailiff and the sequestrator, if he

can sign; if he cannot, mention should be made that he declared he could not sign, after he was called upon to do so, and the statement had been read to him.—1 Cou. 123.—Ord. 1667. arts. 6, 7, 8, 9.

879. If among the things sequestrated some are consumable or perishable, the sequestrator may cause them to be sold, observing the formalities prescribed for the sale of movables under execution:—1 Cou. 123.

880. If the thing sequestrated consists in a right of enjoyment, the sequestrator, if there is no conventional lease, is bound to give out the lease, by auction.—Ord. 1667, art. 10.

881. Neither party can, directly or indirectly, become lessee of the things sequestrated.—*Ibid.*, art. 18.

882. Repairs or other necessary expenditures cannot be made upon the premises sequestrated without the authorization of a court or judge, upon petition, of which the parties have received notice.—*Ibid.*, art. 12.

883. Sequestrators are subject to the duties and obligations imposed upon guardians in seizures under execution.—They are, moreover bound to render an account of their administration when judgment has been given upon the contestation, and also whenever, pending the suit, the judge orders them to do so, at the instance of either of the parties and upon cause shown. As amended by 35 Vic., c. 5, s. 6, Q.

**884.** A sequestrator is discharged by law upon his delivering the property sequestered to the party named in the judgment of the court, and also in the manner stated in the title *Of Deposit* in the Civil Code.

**885.** Orders of sequestration, are executed provisionally, notwithstanding and with-

out prejudice to any appeal.—*Ibid.*, art. 19.

**886.** If either party, by violent means, hinders the appointment or the administration of the sequestrator, the other party may apply to be put provisionally in possession of the things in dispute, under the same conditions as a sequestrator.—*Ibid.*, art. 16.

## TITLE SECOND.

### SPECIAL PROCEEDINGS.

#### CHAPTER FIRST.

##### SUITS BETWEEN LESSORS AND LESSEES.

**887.** Actions to annul or to rescind a lease, or to recover damages resulting from the contravention of any of the stipulations of the lease, or the non-fulfilment of any of the obligations which the law attaches to it, or arising from the relation of lessor and lessee, are instituted either in the superior court or in the circuit court, according to the value or the amount of the rent, or the amount of damages alleged.—C. S. L. C., c. 40, ss. 1, 2.—25 Vic., c. 12, s. 1.

**888.** The lessor may join with his action for rescission, a demand for such a rent as he is entitled to, with or without an attachment for rent, attachment in recapitulation, if neces-

sary, and also an ordinary attachment in the hands of the lessee or of garnishees.—C. S. L. C., c. 40, s. 1 § 6, s. 9.

**889.** All the powers which the superior court or the circuit court can exercise in term in such matters, may also be exercised out of term, and even during the vacation, between the ninth of July and the first of September.—*Ibid.*, ss. 5, 6.

**890.** The delay upon summons is only one intermediate day when the place of service is within a distance of five leagues, with the ordinary extension when the distance is greater.—*Ibid.*, s. 10.

**891.** The defendant is bound to appear before noon on the day fixed by the writ; if he does not, default is recorded against him and the plaintiff may proceed accordingly.—*Ibid.*, s. 11.

**892.** The defendant having appeared is bound to plead before noon on the day following, in default of which the plaintiff may proceed *ex parte*.—*Ibid.*

**893.** The plaintiff is bound to file his answer before noon on the day after the filing of the pleas, on pain of being foreclosed.—Any other pleading which may be necessary to complete the issues must be filed before noon on the following juridical day, on pain of foreclosure.—*Ibid.* s. 12.

**894.** As soon as issue is joined the case may be inscribed upon the roll for proof for any subsequent juridical day, and the parties proceed to proof on the day appointed and continue on from day to day until the proof is closed on both sides.—*Ibid.* s. 13.

**895.** Either party's proof may be declared closed as soon as he ceases to produce evidence.—*Ibid.* s. 13 § 2.

**896.** The evidence of witnesses must be taken down in writing, unless the parties agree to take it otherwise, and in the latter case, notes of such evidence must be taken down and filed in the record as forming part thereof, and such notes are considered to be the evidence adduced in the case.—*Ibid.* s. 14.

**897.** When the proof is closed on both sides, the case may be inscribed on the roll for hearing on the merits on the next following juridical day, without any notice being required; but if it is inscribed for any other day, notice must

be given to the opposite party.—*Ibid.* s. 13 § 2.

**898.** Judgment may be rendered either in term or out of term.—*Ibid.*, ss. 5, 6.—25 Vic., c. 12, s. 1.

**899.** The writs of summons, of attachment, and of execution are addressed to the ordinary officers of the court, like all other writs of the same nature, and by them executed. Writs of possession granted by the circuit court are addressed to and executed by bailiffs of the superior court.—C. S. L. C., c. 40, s. 8.

See note to art. 48, as to addressing writs to sheriffs.

## CHAPTER SECOND.

HYPOTHECARY RECOURSE AGAINST IMMOVABLES OF WHICH THE OWNERS ARE UNKNOWN OR UNCERTAIN.

**900.** When the owner of an hypothecated immovable is unknown or uncertain, the creditor to whom the capital or two years of the interest, [or two years of arrears of any constituted or other rent,] secured by such hypothec is due, may present a petition to the superior court, praying for the sale of such immovable.—C. S. L. C., c. 49, s. 1.

**901.** Such petition must contain :

1. All allegations necessary to establish the debt and the hypothec;

2. A description of the immovable;

3. The name of the occupier, if the immovable is occupied, and if it is not, the name of the last known occupier, the period for which it has remained unoccupied, the names of all the known owners since the hypothec was created, and a declaration that the petitioner has in good faith made due search and used due diligence to discover the owner;

4. Conclusions praying that public notice be given to the actual owner to appear and answer the petition, and that in default of his doing so the immovable be brought to sale. — *Ibid.*, s. 1, §§ 1, 2, 3.

**902.** The petition must be accompanied with an affidavit of the petitioner or of a competent person attesting the truth of the facts therein alleged. — *Ibid.*, § 4.

**903.** The court upon this petition, orders such proof as it deems necessary; and if the proof offered is sufficient, it orders the publication of a notice in accordance with form No. 47 in the appendix to this code.\* — *Ibid.*, s. 2.

\*Form No. 47—*Form of Notice in the Newspapers.*

Lower Canada, }  
District of — }  
(Name of place) — day of —

Know all men that A. B. of the parish of — in the district of —, by his petition filed in the office of the superior court under No. —, prays for the sale of an immovable situated in the said district, *to wit*: A land containing —

**904.** The notice must be inserted once a week during four consecutive weeks in one newspaper published in the English language and in one

arpents in front, by — in depth, in the first range of the seigniority of —, in the parish of —, in the county of —, bounded as follows, to wit: — which land is now occupied by D. C. (or has not been occupied for — years, and was last occupied by N,) and the said A. B., alleging that by deed of — entered into by D. E. of — before F. G., notary, (or as the case may be) at — on the — a hypothec was constituted upon the said immovable hereinabove described, for the sum of —, claims from the present proprietors of the said immovable the sum of — due to him for —.

The said A. B. further alleges that the present proprietor of the said immovable is unknown (or uncertain) and that the known proprietors since the date of the said deed of —, have been N. G. and F.

Notice is therefore given to the proprietor of the immovable to appear before the said court, at —, within two months, to be reckoned from the fourth publication of this present notice, to answer to the demand of the said A. B., failing which, the court will order that the said immovable be sold by sheriff's sale.

First insertion —, (date.)

H. P.

Prothonotary.

newspaper published in the French language, in the district in which the immovable is situated, or if there be none, then in one of the nearest districts. It must moreover be read and posted up, in both languages, at the door of the church of the parish in which the immovable is situated, on a Sunday, immediately after morning service.—*Ibid*, ss. 3, 4.—[If there is no church, then the notice must be posted up in the registry office of the locality.]

906. If, within the delay of two months from the last insertion in the newspapers, and the reading and posting up of such notice, no person appears as hereinafter provided, the petitioner proceeds as in any other suit in which the defendant fails to appear; and upon proof that the required formalities have been observed, the court declares the immovable hypothecated, and orders that it be sold for the payment of the petitioner's claim.\*—*Ibid*, s. 5.

\*Form No. 48.—*Form of writ for the sale of the immovable.*

To the sheriff of the district of—

Whereas the following notice hath been given, in conformity with article 903 of the Code of Civil Procedure of Lower Canada (*recite the notice*); and whereas judgment was rendered on the—day of—, ordering the sale of the immovable described in the said

906. Service of this judgment is not necessary.—*Ibid*, s. 15.

907. Upon the judgment thus rendered, a writ issues, after the expiration of fifteen days, commanding the sheriff to seize and sell the immovable hypothecated, observing the formalities required for ordinary seizures and sales of immovables, saving the minutes of seizure, which are not required.—*Ibid*, ss. 6, 15.

908. Any proprietor, or any holder entitled to exercise rights of ownership, may, at any time before the rendering of the judgment ordering the sale, enter an appearance, specifying his title and the extent of his right of property;\* and at the expiration

notice, you are hereby enjoined to make the ordinary announcements thereof and to sell the said immovable in order to the payment to the said A. B., of the sum of— and— taxed costs, and you shall make a return of this writ and of the oppositions which have then been placed in your hands, on the—.

H. P.

\*Form No. 49.—*Form of appearance.*

I, B. C., appear to answer to the petition of A. B., as proprietor of the immovable described in the said petition, by virtue of (*state by virtue of what title you are proprietor, and give the date of the acts or deeds by virtue of which you are such proprietor.*)

of a delay of two months, the petitioner is then bound to file in the prothonotary's office a demand against the party appearing, for the recognition of the hypothec, and to serve it upon such party; and the same proceedings are had upon such demand as upon ordinary suits for the recognition of hypothecs.—*Ibid*, ss. 7, 17.

**909.** If several persons appear, claiming to be owners, each one in opposition to the others, the petitioner cannot be prevented from proceeding by such opposite claimants, unless his application is contested by one of them, who must previously establish an ostensible right of property, or unless one of them pays the amount of his claim and costs.—*Ibid*, ss. 8, 9.

**910.** In the case of there being opposite claimants to the property, without any contestation of the petition, the court, may, reserving its decision upon the opposite claims, grant the prayer of the petitioner, saving to the parties appearing, and to those who have not appeared, their claims upon the balance of the moneys levied, the distribution of which is made in the ordinary course.—*Ibid*, ss. 11, 12.

**911.** If one or more known owners are in possession jointly with others who are unknown or uncertain, the creditor may, in the ordinary manner, sue the known owners, as possessing jointly with others unknown, and proceed in the same suit, in the manner hereinabove provided, against those

who are unknown or uncertain, modifying the notice which is to be published, so as to meet the circumstances.—*Ibid*, s. 16.

### CHAPTER THIRD.

#### OF THE PARTITION OF TOWNSHIP LANDS HELD IN COMMON.

**912.** Any person seized as tenant in common of lands in townships originally granted, by letters-patent under the great seal of the Province of Lower Canada to the grantees therein named as tenants in common, may demand a partition thereof according to the ordinary form of law.—Such demand may be made by petition, without the formality of a writ of summons.—C. S. L. C., c. 44, s. 1.

**913.** The petition must be presented to the superior court in the district in which the lands are situated.—*Ibid*, s. 5.

**914.** Upon proof of the petitioner's right of property, the court may order that his co-tenants shall appear on a certain day in term, but not before the expiration of one year from the date of such order, to answer such demand in partition; that such order shall be posted up in some frequented place in the township in which such lands are situated, or if there is no such frequented place, then in some frequented place in the next adjoining township, six months at least before the day fixed for the appearance of the parties

interested; and that such order be published in the *Quebec Official Gazette*\* once a week during the said period of six months before the day fixed for the appearance.—*Ibid*, s. 2.

**915.** The co-tenants thus notified to make their claims must do so by an ordinary intervention; and the grounds they may have to urge against the petition for partition must be pleaded, and all issues in the case must be joined in the same manner as upon ordinary suits in partition.—*Ibid*, s. 3.

**916.** The judgment ordering the partition is binding not only upon the parties who have appeared but upon those who have made default.—*Ibid*, s. 4.

**917.** With the consent of the parties in the case, the court may, at any time before final judgment, refer the matters in dispute as well as the partition itself to be decided and finally determined by three arbitrators, one of whom is named by the petitioner, another by the intervening co-tenants, and the third by the court. The proceedings of the arbitrators must be had in such place in the township or parish in which the lands are situate, as they or any two of them may appoint; they may examine the witnesses, or the parties who may be sworn before a judge, the prothonotary, a commissioner of the superior court, or a justice of the peace, and the award of such arbitrators, or of any two of them, is final.—*Ibid*, s. 5.

**918.** The court as in all other suits, awards costs according to its discretion.—*Ibid*, s. 7.

## CHAPTER FOURTH.

### OF COMPULSORY PARTITION AND LICITATION.

**919.** When co-heirs or co-proprietors cannot agree upon a partition of their common property, the action at law to obtain such partition belongs to the one who is first to institute it.—1 *Pig.* 762.—2 *do.* 414.—C. P. C. 966-7.

**920.** All the co-heirs or co-proprietors must be parties in the suit for a partition, without prejudice to the provisions of the preceding chapter.

**921.** A special tutor must be named to each minor whose interests are opposed to those of any other minor.—C. P. C., 968.—C. C., *Suc.* 97.

**922.** The court before rendering judgment upon the suit for partition, orders that the immovables shall be viewed and valued by experts appointed according to the ordinary rules, in order to ascertain whether the whole of the immovables can be conveniently divided, and, in such case, to form the shares according to the provisions of articles 702, 703 and 704, in the Civil Code.—2 *Pig.* 420, 442.—C. P. C., 970-1.

**923.** If all the parties have attained full age they may agree upon one expert.—C. P. C. 971.

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\*31 *Vic. c.* 13, s 4, Q.



**924.** The same proceedings are had upon the report of such expert as upon any other report of experts.—2 *Pig.* 443, *et seq.*—C. P. C. 971.

**925.** After the report of the experts has been homologated, the court sends the parties before the prothonotary or some other person, to proceed with the allotment of shares, minutes of which are taken.—2 *Pig.* 444.—C. P. C., 975, 982.

**926.** If the suit is for an account and a partition, the lots are not formed until after the accounts, the returns, the formation of the mass, and the pretakings have been determined by a practitioner, who is named by the parties or by the court, and whose report must also be homologated.—2 *Pig.* 443.—C. P. C., 976.

**927.** When immovables cannot be advantageously divided, or when there are not as many lots of land as copartitioners, the court may order that such immovables be put up to public auction and sold by way of licitation.—2 *Pig.* 416-7, 421.—*Pot. Société*, 170-1, 194.

**928.** Rules concerning voluntary licitation are contained in the third part of this code. The provisions of this chapter apply to licitations judicially ordered upon actions for partition.

**929.** When the court has ordered a licitation, the plaintiff must cause an advertisement to be published three times in the space of four months in the *Quebec Official Gazette*,\* in the

French and English languages, stating that the immovables therein designated will be put up to auction and adjudged to the highest and last bidder, at the sitting of the superior court next after the expiration of four months from the first insertion of such notice, subject to the conditions mentioned in the list of charges, and giving notice that all oppositions to the sale must be filed at least fifteen days before the day fixed for the sale, and that all oppositions for payment must be filed within six days after the adjudication, on pain of being foreclosed.\*—C. S. L. C., c. 48, s. 3, and schedule F.

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\* Form No. 51.

Lower Canada, }  
District of— } LICITATION.

Public notice is hereby given that under and by virtue of a judgment of the Superior Court sitting at—, in the district of—, on the— day of—, one thousand eight hundred and—, in a cause in which A. B., (*description at length*) is plaintiff and C. D., (*description at length*) is defendant, ordering the licitation of certain immovables described as follows, to wit: (*here insert the description of the property to be sold*) the property above described will be put up to auction and adjudged to the last and highest bidder on the— day of— next, sitting the court, in the court room of the court house in the said city (*or town*)

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\* 31 *Vic.*, c. 13, s. 4, Q.

**930.** The notice must also be read and published on the third Sunday before the day on which the licitation is to take place, at the door of the church of the parish in which the immovables are situated, and if there is no church or if the immovables are not situated within the limits of a parish, then at the most frequented place in the locality, and a copy of such notice must be posted up at the place where such publication is made.—*Ibid*, ss. 2, 3.—27 & 28 Vic., c. 39, s. 1.

**931.** [If the plaintiff fails to proceed with the publication of such notice within fifteen days from the judgment of licitation, any other party may do so, and the first who takes such proceedings has the preference, and has alone the right to be paid the costs of the licitation.]

of—subject to the charges, clauses and conditions contained in the list of charges, deposited in the office of the prothonotary of the said court; and any opposition to annul, to secure charges, or to withdraw, to be made to the said licitation must be filed in the office of the prothonotary of the said court fifteen days at least before the day fixed as aforesaid for the sale and adjudication, and oppositions for payment must be filed within the six days next after the adjudication, and failing the parties to file such oppositions within the delays hereby limited, they will be foreclosed from so doing.

**932.** Oppositions to secure charges, to withdraw, or to annul, in respect of immovables which are to be sold by licitation, cannot be received after the fifteenth day previous to the day fixed for the licitation; if they are filed after that period the right of the opposant is converted into an opposition for payment out of the price of the immovables.—C. S. L. C., c. 48, s. 6.

**933.** If any opposition to secure charges, to withdraw, or to annul, [or any other proceeding incidental to the licitation,] cannot be decided before the day fixed for sale, the licitation is suspended, and, when rendering judgment upon such opposition or proceeding, the court may, if necessary, fix another day upon which the sale may be proceeded with, after the parties have caused another notice, in the same form as the first in so far as it can apply, to be published in the *Quebec Official Gazette*,\* at least three weeks before the day thus fixed.—*Ibid*, s. 7.

**934.** Bids may be made in writing at the prothonotary's office, in the same manner as in cases of sale of immovables by the sheriff, and on the day appointed bids are received at the prothonotary's office, but the adjudication is completed before the court, and minutes are drawn up of such bids and adjudication. — Strangers are in all cases admitted to bid.—*Ibid*, s. 2.—27 & 28 Vic., c. 39, s. 1.

\* 31 Vic., c. 13, s. 4, Q.

**935.** The adjudication is made in accordance with the conditions contained in the list of charges, which must have been approved by the court or judge, after hearing the parties, and must have been filed in the prothonotary's office at least [thirty days] before the day fixed for the sale.—*Ibid.* ; C.S.L.C., c. 48, s. 8.—After the adjudication is completed, and the purchaser has complied with the conditions by paying the moneys which are to be deposited in court, the prothonotary must prepare a deed of sale which must be drawn similarly to a sheriff's deed in so far as the provisions of article 689 are applicable.

**936.** The adjudication after the observance of the formalities above prescribed, transfers the property with its active and passive servitudes, has the same effects as a sheriff's sale, and discharges the property in the same manner from such other charges, privileges and hypothecs, as are not mentioned in the list of charges.—*Ibid.*, s. 5.

**937.** The price of the adjudication must be paid according to the conditions of the sale, and, unless otherwise provided, into the hands of the prothonotary, saving the purchaser's right to retain the moneys on giving security, as in the case of a sheriff's sale ; and the purchaser failing to pay such price is subject to the same penalties and liabilities as the false bidder upon immovables sold in execution.—*Ibid.*, ss. 8, 9., c. 85, ss. 12, 13.

**938.** All oppositions or claims for payment out of the proceeds of the licitation must be filed in the prothonotary's office within six days after the adjudication, after which period they cannot be received, except by order of the court and upon such conditions as it may impose.—C. S. L. C., c. 48, s. 10.

**939.** The distribution of the purchase money is subject to the same formalities as in cases of confirmation of title, and of execution against immovables, and the party prosecuting the licitation is bound to obtain the certificate of registered hypothecs which is necessary for that purpose.—*Ibid.*, s. 8.

**940.** If any immovable is situated partly in one district and partly in another, its licitation as a whole may be demanded and may be ordered in either district, if the jurisdiction in such case is not assigned by law to a particular court.—*Ibid.*, s. 11 ; c. 82, s. 27.

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## CHAPTER FIFTH.

### OF ACTIONS OF BOUNDARY, OR TO VERIFY OR RECTIFY AN- CIENT BOUNDARIES.

**941.** Whenever two contiguous lands have never been bounded, or the boundaries have disappeared, or the fences or boundary works have been wrongly placed, and one of the neighbours refuses to agree upon a surveyor to determine

the boundaries, or to verify or to rectify the division line, as the case may be, the other party may bring an action against him to compel him to do so.

**942.** If the parties do not agree, the court names a sworn surveyor, whom it charges with making a plan of the locality, showing the respective pretensions of the parties, and with making such other operations as it may deem necessary.

**943.** The surveyor thus named is bound, under his oath of office, to proceed in the same manner as experts.

**944.** If the parties desire it, more than one surveyor may be appointed.

**945.** The fixing of bounds, the verifying of ancient boundaries, or rectifying of division lines, is ordered in conformity with the rights and titles of the parties, and is done by the person named by the court, who proceeds in accordance with the judgment, and if necessary, places boundary marks in presence of witnesses, in accordance with the provisions contained in chapter 77 of the consolidated statutes of Canada, and must draw up a statement of his operations, and return the original of such statement to the court.

than a farmer on shares, or a holder by sufferance, who is disturbed in his possession, may bring an action on disturbance against the person who prevents his enjoyment, in order to put an end to the disturbance and to be maintained in his possession.—The action for repossession may be brought by any person who has had possession of an immovable or real right for a year and a day, against any person who has forcibly dispossessed him.

**947.** Possessory actions must be brought within a year from the disturbance.

**948.** Saving the provisions of article 1110, actions on disturbance, or for repossession, cannot be joined with the petitory claim, nor can the latter be brought until the action on disturbance or for repossession has been terminated, and the condemnation has been satisfied and executed. Nevertheless, if the party who has obtained judgment is in default with regard to the taxation of the costs and the liquidation of the damages, the other party may bring his petitory action, on giving security that he will satisfy such condemnation.

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## CHAPTER SIXTH.

### OF POSSESSORY ACTIONS.

**946.** The possessor of any immovable or real right, other

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## CHAPTER SEVENTH.

### OF DISCHARGE FROM HYPOTHECS, OR CONFIRMATION OF TITLE.

**949.** Any person who has acquired immovable property

by purchase, exchange, or other title of a nature to transfer ownership, may free such property from any hypothec with which it is charged by obtaining a confirmation of his title according to the formalities hereinafter prescribed.—C. S. L. C., c. 36, s. 1.

950. Such person must lodge the title which he seeks to have confirmed in the office of the prothonotary of the superior court, in the district where the immovable is situated or in which the confirmation of title must be obtained, and obtain from the prothonotary a notice mentioning that the deed has been so lodged, containing a designation of the deed and of the parties thereto, a description of the immovable, the date at which the application for confirmation will be presented to the court, an indication of the persons who possessed the immovables during the three years next before such notice, and calling upon all creditors who claim to have any privilege or hypothec upon the immovable to file their oppositions at least eight days before the day fixed for presenting the application.\*—*Ibid*, ss. 2, 4.—[If the deed

comprises immovables situated in different districts, an application for confirmation of title should be made in each district, for such immovables as are situated therein.—When the immovable is situated partly in one district and partly in another, the proceedings may be had in either district, and avail for the whole of the immovable.—*Ibid*, s. 5.]

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the one part; and E. F. of—, of the other part; being a (sale) by the said C. D. to the said E. F., of (a lot or parcel of land) situate, &c., and possessed by—as proprietor, for the three years now last past; And all persons who have or claim to have any privilege or hypothec under any title or by any means whatsoever in or upon the said (lot of land), immediately previous to and at the time the same were acquired by the said C. D. are hereby notified that application will be made to the said court on—, the—day of—for a judgment of confirmation, and that unless their claims are such as the registrar is bound by the provisions of chapter thirty-six of the Consolidated Statutes for Lower Canada, to include in his certificate to be filed in this case under the said act, they are hereby required to signify in writing their oppositions, and file the same in the office of the said prothonotary eight days at least before the said day, in default of which they will be forever precluded from the right of so doing.

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\*Form No. 50.—Public notice is hereby given that there has been lodged in the office of the prothonotary of the superior court, in the district of—, a (deed) made and executed before A. B. and colleague, notaries public, on the—day of—between C. D. of—, of

**951.** The notice must be in French and in English, and be inserted three times in the course of four months in the *Quebec Official Gazette*.\*—*Ibid*, s. 2, § 2.

**952.** The notice must be publicly and audibly read, on the third or fourth † Sunday before the day on which the application is to be presented, at the door of the church of the parish or place where the immovable is situated, or, if there is no church, at the most frequented place in the locality, and must be posted up at the place where such publication is made.—*Ibid*, s. 2, § 2.—27 & 28 Vic., c. 39, s. 2.

**953.** In the case of immovables by fiction of law, the proceedings are had in the district where the vendor or assignor had his domicile during the three years next preceding the execution of the deed to be confirmed, or if during that period he had his domicile in more districts than one, then in the district in which he is actually domiciled, giving the same notice in the other districts in which he was domiciled during such three years.—C. S. L. C., c. 36, s. 3.

**954.** Upon the day mentioned in the notice, the applicant is bound to present his application for confirmation to the court, together with certificates of the publication and posting up required, and copies

of the *Quebec Official Gazette* \* containing the advertisement.

**955.** [The applicant must, moreover, file with his application a certificate from the registrar or registrars within whose divisions the immovable is or was situated, mentioning all hypothecs not apparently extinguished, registered previously to the registration of the deed of which ratification is applied for.]—The certificate must mention all hypothecs registered against the immovable itself, whenever hypothecs shall be so registered, when the plan and book of reference will be in force in the registration division; all hypothecs registered against any person who was owner of the land at any time during the ten years immediately preceding the date of the registration of the deed sought to be confirmed; and all previous hypothecs the registration of which has been renewed during that period.—Such certificate must also state the date of the deed registered as creating or giving rise to such hypothec, the date of its registration, the names, occupation and residence of the creditor, the name of the notary or notaries before whom it was passed, if it is notarial, and must mention any partial discharge registered, and the sum which appears to be due, in principal and interest, and, in the case of renewed registration, such certificate must also

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\* 31 Vic., c. 13, s. 4, Q.

† 35 Vic., c. 6, s. 19, Q.

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\* 31 Vic., c. 13, s. 4, Q.

mention the registration which is thus renewed, and the registrar is not bound to extend his searches beyond the date of a sheriff's title, a sale in bankruptcy, a judgment of confirmation, or any other deed of a judicial sale having the effect of a sheriff's sale, which has been registered, except for such hypothecs as are not discharged by such deed.—If there are no hypothecs registered, or if, by the registry books, all the hypothecs appear to have been discharged, the registrar must state the fact accordingly in his certificate.\*—C. S. L. C., c. 36, ss. 7, 10.—25 Vic., c. 11, s. 4.—27 & 28 Vic., c. 40, s. 1.

956. The provisions of articles 701, 702 and 703 apply also to the certificate mentioned in the preceding article.

957. All hypothecary creditors, whose rights are not made known by the deed of which confirmation is sought, or by the registrar's certificate, are bound, on pain of being foreclosed from doing so, to file their oppositions on or before the eighth day next preceding the day fixed for presenting the application.—C. S. L. C., c. 36, ss. 15, 16.

958. No opposition is, however, necessary for the preservation of the principal of rents created in place of seigniorial rights.—*Ibid.*, ss. 17, 18.—25 Vic., c. 11, s. 2.—The provisions of articles 719 and 721

apply also to proceedings to obtain confirmation of title.

959. During the four months prescribed for the publication of the notice of an application for confirmation of title, any creditor of the vendor or assignor or of his authors, may appear at the prothonotary's office and bid an increase over the sum, price, or other consideration or value, if any, mentioned in the title, and have his bid received, provided the increase be equal to at least one tenth of the whole price, sum or other consideration, and the bidder offer, besides, to refund to the applicant all his costs and lawful disbursements, giving him security to that effect in the ordinary manner, or depositing for that purpose a sufficient sum, according to the discretion of the court or judge, reserving the subsequent completion of the precise amount.—C. S. L. C., c. 36, s. 11.

960. Any other creditor of the vendor or assignor may, in like manner, and under the same conditions, outbid such creditor; and all such creditors may continue outbidding each other, provided each outbidder offers an increase of at least one-twentieth of the price, purchase money or other consideration, over and above the costs and lawful expenses.—*Ibid.*, s. 11 § 2.

961. The applicant may, however, retain the immovables at the amount of the highest bid legally offered.—*Ibid.*, § 3.

962. If no such outbidding

\* V. form 36, ante p. 103, in connection with art. 700.

takes place within the delay above mentioned, the value of the immovable remains definitively fixed at the price and sum mentioned in the title deed, saving the provisions hereinafter made.—*Ibid*, s. 11.

**963.** If the applicant desires to discharge the property from hypothecs, he must deposit in the hands of the prothonotary, together with the certificate of hypothecs, the price mentioned in his title deed, or the amount which such price has reached by the outbidding; and if it appears by the certificate of the registrar that there are no hypothecs, and if there are no oppositions or claims, or if the amount deposited is sufficient to pay all the charges which appear, then judgment of confirmation is pronounced purely and simply.—*Ibid*, s. 12.

*Notwithstanding anything to the contrary contained in article 963 of the Code of Civil Procedure, whenever the applicant for a judgment of confirmation of title has an hypothecary claim against the property, which appears by the certificate of the registrar, he may retain the purchase money, to the extent of his claim, until judgment has been rendered, provided he furnishes the prothonotary with good and sufficient sureties for all damages that might result to any party interested, in the event of the non-payment of such sum as the court may order such applicant to pay into the hands of the prothonotary; and upon such security being given the amount so retained shall be*

*deemed to be deposited, and the case shall be dealt with accordingly.*—35 Vic., c. 6, s. 20, Q.

**964.** But if the sum deposited is not sufficient to pay all the charges and hypothecs which appear, or if no price is mentioned in the deed, the court or a judge may, at the instance of the applicant, name two experts, and the applicant names a third, in order to determine the value of the property and to report thereon; the whole according to the ordinary formalities.—*Ibid*, § 3.

**965.** If the value determined by the experts does not exceed the price paid in by the applicant, the judgment of confirmation is pronounced purely and simply.—If the value determined by the experts exceeds the price thus paid in, or if no price is mentioned in the title deed, the applicant cannot obtain a confirmation, unless he deposits the difference between the value thus ascertained and the price, or the whole of such value, if no price has been agreed upon.—*Ibid*, § 4.

**966.** The provisions of the last two preceding articles do not apply to cases of expropriation of property by competent authority for public purposes, when the compensation or indemnity has been settled by arbitration or by experts, according to law.—*Ibid*, s. 13.

**967.** Upon proof of the observance of all the formalities hereinabove prescribed, judgment is pronounced, confirming the title deed as free from all hypothecs, other than those



mentioned in article 958.—*Ibid*, s. 14.

968. If the applicant is willing, and files a written declaration to that effect, judgment may be rendered subject to the hypothecs mentioned in the certificate of the registrar and to the oppositions and claims filed; and in such case the immovable is discharged from such hypothecs only as are not mentioned in such judgment.—*Ibid*, s. 12.

969. The price deposited is distributed under an order of the court, like moneys levied upon the seizure and sale of immovables under execution.—*Ibid*, s. 19.

970. The prothonotary, before delivering to any person whatever a copy of any judgment of confirmation of title, is bound to cause such judgment to be registered in the proper registry office, as prescribed in the title *Of registration of real rights* in the Civil Code, and has a right to demand from the applicant the cost and expenses of such registration, and of the cancellings which it occasions.—25 Vic., c. 11, s. 2.

971. The word "hypothec," in this chapter, includes all privileges affecting real estate.—*Ibid*, s. 32.

## CHAPTER EIGHTH.

### OF SEPARATION BETWEEN CON-SORTS.

#### SECTION I.

##### *Of Separation of Property.*

972. No suit for separation of property can be brought by a married woman without the previous authorization of a judge, granted upon petition to that effect or upon conclusions for that purpose contained in the declaration in such suit, 2 Pig., 182.—C. P. C., 86b.

973. Suits for separation of property must be brought only in the cases and within the jurisdiction mentioned in article 1311 of the Civil Code, and in article 35 of this code.—2 Pig., 181.

974. The formalities required for summons in ordinary cases must be strictly observed in such suits; and the consort summoned has no power to dispense with the same, either directly or indirectly, even as regards the delay upon the summons.—[Notice of such suit must be given and published during one month in the *Quebec Official Gazette*,\* and in two newspapers at, or as near as possible, to the place where the defendant resides, one of which is published in the French and the other in the English language.—No proceedings can be had in such suit until after

\* 31 Vic., c. 13, s. 4, Q.

the publication of such notice.]—27 & 28 Vic., c. 17, s. 12 § 3.

**975.** Any creditor of the person sued for separation of property has a right to intervene in the suit, in order either to watch the proceedings or to contest the plaintiff's claim, and he may for this purpose set up whatever grounds and exercise whatever rights his debtor might.—Code Conv. Matrim. art. 60.—2 Pig. 180.—27 & 28 Vic., c. 17, s. 12, § 3.—C. P. C., 871.

**976.** Separation of property thus sued for cannot be granted upon the confession or the admissions of the defendant; the allegations of the declaration must be established by some other legal proof.—2 Pig. 186-7.—C. P. C., 870.

**977.** The judgment pronouncing separation of property may at the same time determine the reprises of the plaintiff, or order that they shall be determined by a practitioner or by experts, if there be occasion for it.—2 Pig. 193-4.

**978.** The judgment of separation must be executed and published in accordance with the provisions contained in articles 1312 and 1313 in the Civil Code.—C. P. C., 866, 872.

**979.** The wife who sues for separation may accept or renounce the community, according to circumstances. If the husband fails to make an inventory, she may, upon being authorized, have one made, if she has not renounced.—If she accepts, the partition is effected in the manner provided in the Civil Code, in the title relating

to marriage covenants.—2 Pig. 182-3, 196.

**980.** [The wife's renunciation of the community must be registered in the registry office of the division in which the husband was domiciled at the time that the suit was brought.]

**981.** The judgment of separation may be executed voluntarily or by legal means, as provided in article 1312 of the Civil Code, but without prejudice to the rights of third parties.—[No married woman, separated as to property, can carry on trade until she has delivered to the prothonotary of the district and the registrar of the county in which she intends carrying on trade, a declaration in writing stating her intention, her names and surname, and those of her husband, and the style under which she proposes carrying on such business. This declaration is entered and transcribed in the same registers as the declaration concerning partnerships mentioned in chapter 65 of the Consolidated Statutes for Lower Canada.—All married women, separate as to property, and carrying on trade at the time of the coming into force of this code are bound to comply with the above mentioned formalities within six months from such time.—Any married woman failing to comply with the requirements of this article is liable to a penalty of two hundred dollars which may be recovered, before any court of competent civil jurisdiction, by any person suing as well in his own name

as in behalf of the crown, and one half of such penalty belongs to the prosecutor and the other half to the crown, unless the suit be brought in the name of the crown only, in which case it is entitled to the whole of the penalty.]

**982.** When the reprises of the wife consist of movable property, the husband may oblige her to invest the proceeds thereof, or a portion of the same, in the purchase of immovables.—2 Pig. 196.

**983.** If the husband gives up immovables to his wife in payment of her reprises, she must apply for and obtain a judgment of confirmation of the deed by which he does so, according to the formalities prescribed in the preceding chapter.—2 Pig. 196.

**984.** If the amount at which the rights of the wife have been determined is not voluntarily paid, execution may be enforced as in ordinary cases. Nevertheless, the husband may compel the wife to receive immovables in payment, at a valuation by experts, provided such immovables are available and do not prejudice her interests.—2 Pig. 196.

## SECTION II.

### *Of Separation from Bed and Board.*

**985.** Besides the provisions contained in the Civil Code on the subject of separation from bed and board, those of the *present section* also apply.

**986.** A wife who desires to obtain a separation from bed and board must, in order to bring the suit, first obtain the authorization of a judge, by means of a petition giving a summary statement of the facts which give rise to her application, with an affirmation under oath, and indicating the house where she intends to reside during the suit, and where she will convey the linen and wearing apparel necessary for her use.—The application must be served upon her husband, if the judge so orders.—2 Pig. 216-7.

**987.** If the wife thinks proper to demand an attachment of the movable property of the community, she must likewise be authorized by a judge for that purpose.—The attachment is effected in the same manner as attachment for rent, but the husband remains judicial guardian of the property attached.—2 Pig. 184.

**988.** The wife may also join with her demand for separation an attachment in revendication of such movables as belong to her.

**989.** The trial of the case, the judgment, its execution, and its publication are subject to the provisions contained in the preceding section.

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## CHAPTER NINTH.

### OF OPPOSITIONS TO MARRIAGE.

**990.** [Every opposition to a marriage must be accompani-

ed with a notice indicating the day and hour at which the opposition will be presented to the superior court, or to a judge of such court.]

**991.** [The opposition and notice must be served both upon the functionary called upon to solemnize the marriage and upon the intended consorts, or the persons who represent them, a delay of five intermediate days being observed, with the usual addition where the distance exceeds five leagues.]

**992.** [The proceedings upon the opposition are summary, and conducted in the same manner as those in suits between lessors and lessees.]

**993.** [If the opposant fails to present his opposition upon the day fixed, any person interested may obtain judgment of non-suit against him, upon filing a copy of the opposition served upon such person; and upon receiving a copy of such judgment the functionary called upon to solemnize the marriage may proceed.]

**994.** [If the opposant fails to proceed in the manner prescribed the opposition is declared abandoned.]

**995.** [The court or judge, before rendering judgment upon the opposition may, if there be cause for it, summon the parents, or, in default of parents, the friends of the intending consorts, in order that they may give their opinion upon the intended marriage, and that such further action may be had as to law may appertain.]

**996.** [An appeal lies to the

court of queen's bench from judgments rendered on such oppositions, the same formalities being observed as in appeals from the circuit court, and the proceedings on such appeal take precedence.]

## CHAPTER TENTH.

### PROCEEDINGS AFFECTING CORPORATIONS OR PUBLIC OFFICES.

#### SECTION I.

*Of Corporations Illegally Formed, or Violating or Exceeding their Powers.*

**997.** In the following cases :

1. Whenever any association or number of persons acts as a corporation without being legally incorporated or recognized ;

2. Whenever any corporation, public body or board, violates any of the provisions of the acts by which it is governed, or becomes liable to a forfeiture of its rights, or does or omits to do acts the doing or omission of which amounts to a surrender of its corporate rights, privileges and franchises, or exercises any power, franchise or privilege which does not belong to it or is not conferred upon it by law :—It is the duty of her majesty's attorney general for Lower Canada to prosecute, in her majesty's name, such violations of the law, whenever he

has good reason to believe that such facts can be established by proof, in every case of public general interest; but he is not bound to do so in any other case unless sufficient security is given to indemnify the government against all costs to be incurred upon such proceeding. *And in such case the special information must mention the names of the person who has solicited the attorney general to take such legal proceedings and of the person who has become security for costs.*—C. S. L. C., c. 88, s. 9. 41 Vic., (1878) c. 13, s. 1, Q.

**998.** The summons for that purpose must be preceded by the presenting to the superior court, or to a judge, of a special information, containing conclusions adapted to the nature of the contravention, and supported by an affidavit to the satisfaction of the court or judge; and the writ of summons cannot issue upon such information without the authorization of the court or judge.—*Ibid*, 35 Vic., c. 6, s. 21, Q.

*This writ, as well as the writs of quo warranto, mandamus and prohibition, shall be in the same form as ordinary writs of summons.*—35 Vic., c. 6, s. 21, Q.

**999.** The writ of summons commands the persons acting illegally as a corporation, or the corporation complained of, to appear on a day fixed by the court or judge.—It is served, in the first case, upon some one of the persons usurping corporate rights, or at the principal office or place of business of the association,

speaking to a reasonable person; and, in the second case, according to the provisions contained in articles 61, 62, 63, and 78.—*Ibid*, §§ 2, 3.

**1000.** The delay upon summons is three days, with the usual extension when the distance exceeds five leagues, as prescribed by article 75.—*Ibid*, s. 1, § 2.

**1001.** The defendants are bound to appear on the day fixed, and if they fail to do so the prosecutor proceeds with his case by default.—*Ibid*, s. 5.

**1002.** If the defendants appear, they must, within four days, plead specially to the information; and the prosecutor is bound to answer, within three days.—*Ibid*, s. 2.

**1003.** Within three days from the filing of the answer, the prosecutor must proceed to prove the allegations of the information, in the same manner as proof is made in ordinary cases; and after the closing of his proof and within a further delay of two days, the defendants are bound to adduce their proof.—*Ibid*, s. 3.

**1004.** As soon as the proof of the defendants is closed, the prosecutor may be allowed to produce evidence in rebuttal, if there is occasion for it; if he does not, either of the parties may inscribe the cause for hearing on the merits, giving the opposite party notice of at least one day before the day fixed.—*Ibid*, s. 4.

**1005.** The court or judge may extend the delays whenever it is necessary for the ends of justice.—*Ibid*, § 2.

**1006.** Notwithstanding the provisions contained in article 1002, the defendants may set up against the information such preliminary exceptions or exceptions to the form as they deem advisable, and the plaintiff may demur to the pleas set up in defence.—*Ibid.*

**1007.** If the judgment declares the association to have been illegally formed, the persons composing it are personally bound to pay the costs; and if it be rendered against a corporation, public body or board, the costs may be levied either upon the property of such corporation or upon the private property of the directors or other officers thereof.—*Ibid.*, s. 10, § 5.

**1008.** Whenever any corporation, public body or board, has forfeited its rights, privileges and franchises, the judgment declares it to be dissolved and to be deprived of its rights, and a curator is named in due form to administer its property and liquidate its affairs.—*Ibid.*, s. 10.

**1009.** The curator, after having given the security required by the court or judge, becomes seized of the property of the dissolved corporation, an inventory of which he must cause to be made in due form of law, in the presence of one or more of the persons who were members of such corporation. He must afterwards dispose of the movable property to the best advantage.—*Ibid.*, C. C. 371-2-3.

**1010.** [He is bound to give notice of his appointment by

an advertisement to be inserted at least twice in two newspapers designated by the court or judge.]

**1011.** The curator must cause the proceeds realized to be distributed among the creditors of the corporation, by the superior court, in the district in which its principal place of business was situated, after giving notice of the day upon which he will make application for that purpose.—Such notice must be published at least three times in two public newspapers, named by the court, and the first publication must be made two months at least before the day fixed for such application.—C. S. L. C., c. 88, s. 10, § § 1, 2.

**1012.** If there are any debts remaining due by such corporation, its immovable property can only be sold upon a suit brought against the curator in the ordinary form.—*Ibid.* § 3.

**1013.** [If there are no debts due by such corporation, or if such debts are not known, then the curator must proceed to the sale of the immovables to the highest bidder, after giving notice of such sale, in the same manner as the sheriff does in executions against the immovables of a debtor.]—*Ibid.* § 4.

**1014.** A sale thus effected by the curator after observing the requisite formalities, has all the effects of a sheriff's sale.—*Ibid.* s. 5.

**1015.** The curator is then bound to account, in the same manner as curators to vacant estates.

## SECTION II.

*Usurpation of Public or Corporate Offices.*

**1016.** Any person interested may bring a complaint whenever another person usurps, intrudes into, or unlawfully holds or exercises :

1. Any public office or any franchise or privilege in Lower Canada ;

2. Any office in any corporation, or other public body or board ;—Whether such office exists under the common law, or was created in virtue of any statute or ordinance.—C. S. L. C., c. 88, s. 1.

**1017.** Such complaint is brought before the superior court, or before a judge of the said court, but the writ of summons cannot issue without leave of the court or judge, obtained in the manner mentioned in article 998 ; and the same delays and formalities are observed in the proceedings as in the preceding section.—*Ibid.* ss. 1, 2, 3, 4.

**1018.** The complainant, in addition to the allegations concerning the usurpation and illegal detention of the office, may, in his petition, declare the name of the person who has a right to such office or franchise, and allege such facts as are necessary to show such right, and the court may in such case adjudicate upon the claims of both parties.—*Ibid.* s. 6.

**1019.** If the complaint is well founded, the judgment orders the defendant to be

ousted and excluded from the office, franchise or privilege, and condemns him to pay costs to the complainant ; the court or judge may also condemn the defendant to pay a fine not exceeding the sum of four hundred dollars, which must be paid over to the receiver-general of the province.—*Ibid.* s. 7, § § 1, 2.

**1020.** If the complaint is dismissed, the complainant must be condemned to pay all costs.—*Ibid.* § 3.

**1021.** Any person whom the judgment declares to be entitled to the office, or the franchise, may, after taking the oath of office, and giving such security as may be required by law, take upon himself the exercise of such office or franchise, and may demand of the defendant all keys, books, papers and insignia, in the possession or custody of such defendant and belonging to such office or franchise, and in the case of neglect or refusal to deliver up the same, the court may order the sheriff to take possession of such keys, books, papers and insignia, and to deliver over the same to the person adjudged to be entitled thereto, without prejudice to any criminal proceedings to which such defendant may be liable.—*Ibid.* s. 8, § § 1, 2.

## SECTION III.

*Of Mandamus.*

**1022.** In the following cases :

1. Whenever any corporation

neglects or refuses to make any election which by law it is bound to make, or to recognize such of its members as have been legally chosen or elected, or to reinstate such of its members as may have been removed without lawful cause;

2. Whenever any person holding any office in any corporation, public body, or court of inferior jurisdiction, omits, neglects or refuses to perform any duty belonging to such office, or any act which by law he is bound to perform;

3. Whenever any heir or representative of a public officer omits, refuses or neglects to do any act which, as such heir or representative, he is by law obliged to do;

4. In all cases where a writ of mandamus would lie in England:—Any person interested may apply to the superior court or to a judge in vacation and obtain a writ, commanding the defendant to perform the act or duty required, or to show cause to the contrary on a day fixed.—C. S. L. C., c. 88, s. 11.

1023. The application is made by a petition, supported by an affidavit affirming that the facts set forth in said petition are true, and presented to the court or judge, who may thereupon order a writ of mandamus to issue; and such writ is served in the same manner as any other writ of summons.—*Ibid.* s. 12. 35 Vic., c. 6, s. 22, Q.

1024. The proceedings subsequent to the service are had in accordance with the

provisions contained in the first section of this chapter.—*Ibid.* s. 12, § 2.

1025. If the petition is well founded, the court or judge may order the issuing of a peremptory writ, commanding the defendant to do the thing demanded of him; and if he fails to comply he may be held by coercive imprisonment to do it, unless the defendant is a corporation, in which case it may be condemned to pay a fine not exceeding two thousand dollars, which is levied by execution in the ordinary manner against its movable and immovable property.—*Ibid.* s. 13.

1026. Any person to whom, or the person representing any corporation to whom, the peremptory writ is directed, is bound to return such writ on the day specified, together with a certificate thereon of its execution.

1027. If the matter relates to the making by a corporation of any election to an office which is vacant by reason of such election not having taken place within the time required, or being or having been declared null, the proceedings are the same as above mentioned; and the writ commands the proper officer, or, in his absence, such person as is appointed by the court or judge, to proceed to such election, at the place and time fixed, and to do every act to be done in order to such election, or show cause to the contrary.—*Ibid.* s. 14, § 2.

1028. The person to whom such writ or peremptory writ is addressed cannot, however,



proceed to such election without giving public notice thereof in writing, in the French and in the English languages; and such notice must, during at least ten days previous to the day fixed for such election, be posted up at the door of the church of the locality in which the principal office or place of business of such corporation is, and if there is no church, then in one of the most public places in such locality.—*Ibid.* s. 14, § 3.

1029. Nevertheless, every such election and every act done in order thereto is void, unless as great a number of voters are present and vote thereat as would have been required if the election had taken place at the usual time and under ordinary circumstances.—*Ibid.* § 5.

1030. The peremptory writ is served in the same manner as writs in error or in appeal.

#### SECTION IV.

##### *Of Prohibitions.*

1031. Writs of prohibition are addressed to courts of inferior jurisdiction whenever they exceed their jurisdiction.—They are applied for, obtained and executed in the same manner as writs of mandamus, and with the same formalities\*.—C. S. L. C., c. 89, s. 1.—2 Warton, *L. Lex.*, 832. \*

\* See arts. 1023, et seq.

#### SECTION V.

##### *General Provisions.*

1032. In any case wherein the rights of a municipal corporation are involved, no elector entitled to vote is incompetent, as such, to give evidence.—*Ibid.* C. S. L. C., c. 88, s. 15.

1033. An appeal from any final judgment rendered under the provisions contained in this chapter lies to the court of queen's bench, except in matters relating to municipal corporations and offices; provided the writ of appeal be issued within forty days from the rendering of the judgment appealed from.—*Ibid.* s. 17.

##### *Of the Writ of Injunction. 41 Vic., c. 14, Q.*

1. The superior court, in term, or any judge thereof, in vacation or during term, may grant a writ of injunction, ordering the suspension of any act, proceeding, operation, work of construction or demolition, according to the circumstances, in any of the cases following:

1. Whenever any corporation, unlawfully and without having fulfilled the formalities set forth and prescribed by law or the act of incorporation thereof, takes possession, or on its own behalf causes possession to be taken, of any land the property of other persons, or makes or causes to be made on any land the property of other persons, excavations or works of demolition or construction; or whenever such corporation acts or takes

any proceeding, beyond its power, or without having fulfilled the formalities prescribed by law, or the act of incorporation thereof ;

2. Whenever any person, who has not acquired the possession of one year, and who has no valid title to the property, causes work to be carried on, upon any land whereof another is proprietor through a valid title, and of which he is in lawful possession ;

3. Whenever any person does anything in breach of any written contract or written agreement ;

4. To prevent the transfer of shares in any corporation or company, when such shares belong to minors, interdicted persons, married women not separated as to property, or unauthorized, or persons legally incapacitated, or when the ownership of such share is in dispute, until the superior court or a judge thereof shall have adjudicated on the right of property in such shares or stock, or shall have granted permission for the transfer of such shares ;

5. To prevent one or more members of a partnership firm, either during the existence of the partnership or after its dissolution, from doing acts inconsistent with the terms of the partnership agreement, or with the duties of a partner. And this provision shall apply to persons being or holding themselves out as being representatives of a deceased partner ;

6. To prevent any person or corporation from trespassing on the property of the crown, or

from destroying, cutting, or removing any property belonging to the crown, or in which the crown has any right or interest.

2. The application for the writ of injunction shall be made by petition, supported by one or more affidavits setting forth the facts of the case, and accompanied by such documentary evidence as may be necessary to establish the petitioner's right to the satisfaction of the court or of a judge thereof, and the proceedings thereon shall be in conformity with articles 998 to 1006 inclusively and with article 1023 of the code of civil procedure.

3. Except in cases of urgent necessity, the court or a judge thereof may, in their discretion, order that notice of the presentation of such petition be served upon the adverse party, in the time and manner the said court or judge shall see fit to order.

4. Nevertheless the writ of injunction shall not issue, unless the person applying therefor first gives good and sufficient security, in the manner prescribed by and to the satisfaction of the court or a judge thereof, in the sum of six hundred dollars, or any other higher sum fixed by the said court or judge, for the costs and damages, which the defendant, or the person against whom the writ of injunction is directed, may suffer by reason of the issue thereof.\*

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\* This security must be by judicial bond. The Board for the management of the Temporal

Upon the return of the writ, the court or a judge thereof may order that such security shall be increased to such amount as it may be deemed expedient.\*

5. The writ of injunction enjoins the adverse party to appear before the court or a judge thereof to answer the petition, and to suspend all acts, proceedings, operations or works respecting the matters in dispute under pain of all legal penalties.

6. The writ of injunction is served in the same manner as any other writ of summons; but if found necessary, the court or judge may prescribe any other mode of service.

7. Proceedings commenced before the court in term may be continued before a judge in vacation or even during term and, in like manner, proceedings commenced before a judge in vacation may be continued before the court in term or before

any judge in chambers even during term.

2. In order to avoid doubt it is hereby declared and enacted that in any proceeding commenced under this act, any judge of the superior court shall, at every stage of such proceeding, have the same power to act therein as the judge before whom such proceeding was commenced.

8. An injunction may, in any of the cases mentioned in section one of this act, be granted incidentally upon petition, without the formality of a writ, in a cause pending before the superior court, either by the court or by a judge in chambers, even during term, upon security being given as hereinbefore provided for; and the procedure shall be thereafter conducted to judgment on the incidental proceeding in the same manner as on a writ of injunction.

2. And in any proceeding instituted under this act, any additional injunction that may be deemed necessary by the court or a judge thereof may upon petition, after due notice, be granted by an interlocutory order, for such length of time and upon such conditions, as to security or otherwise, as the court or judge may deem reasonable. And such additional injunction, as well as the injunctions contained in the original writ, may, from time to time, be suspended as the court or judge may deem necessary, and for such period and upon such conditions, as to security or otherwise, as the court or judge may deem reasonable, and may afterwards, from time to time, be

alities fund of the Presbyterian Church of Canada in connection with the Church of Scotland and Dobie. Queen's bench, appeal side, Montreal, 1878.

\* In addition to the security required by this section, security for costs in the ordinary manner may be required if the plaintiff resides beyond the province. Dobie &c. The Board for the management of the Temporalities fund of the Presbyterian Church of Canada in connection with the Church of Scotland. Superior Court, Montreal, February, 1879.

*renewed upon such conditions, as to security and otherwise, as by the court or judge may be deemed right.*

**9.** *Any judgment, rendered by a judge out of court under this act, shall be subject to review and appeal in the same manner and to the same extent that it would have been subject to appeal or review, if rendered by the court in term.*

**10.** *Any final judgment under this act taken into review or appeal and any interlocutory or provisional order under this act from which an appeal shall be allowed by the court of queen's bench, shall be executed and in force provisionally, notwithstanding and without prejudice to such appeal or review; but the superior court, in review, or the court of appeals, as the case may be, may in their discretion provisionally suspend the injunction.*

**11.** *The judgment, if in favor of the petitioner, pronounces the injunctions required, adjudicates as to costs, and must be served upon the adverse party.*

**12.** *If a party against whom the injunction is directed, violate or refuse to obey the injunctions laid upon him either by the writ or by any interlocutory or final judgment, the court or a judge thereof may cause to be destroyed whatever may have been done in contravention to the injunction, if it be practicable;—also the court or a judge thereof may punish the party contravening by an imprisonment not exceeding thirty days, but which may be repeatedly inflicted*

*until the party obeys the mandate of the court or judge.*

**2.** *If the party violating the injunction be a company or corporation, such company or corporation may be condemned to pay a fine not exceeding two thousand dollars, but which may be repeatedly inflicted until they obey the mandate of the court or judge.*

**3.** *The party aggrieved by the disobedience of such person, company or corporation may also recover from the party or parties disobeying, such damages as he may show that he has sustained.*

**13.** *All fines imposed under and in virtue of the provisions of this act shall be the property of the crown, and shall form part of the consolidated revenue fund of the province.*

## CHAPTER ELEVENTH.

### OF THE ANNULLING OF LETTERS-PATENT.

**1034.** *Any letters-patent granted by the crown may be declared null and be repealed by the superior court:*

**1.** *Where such letters were obtained by means of some fraudulent suggestion, or where some material fact has been concealed by the patentee, or with his knowledge or consent;*

**2.** *When they have been granted by mistake or in ignorance of some material fact;*

**3.** *When the patentee, or those claiming under him, have done or omitted to do some act,*

in violation of the terms and conditions upon which such letters-patent were granted, or for any other reason have forfeited their rights and interests in such letters-patent.—C. S. L. C., c. 89, s. 5.

**1035.** All demands for annulling letters-patent may be made by suits in the ordinary form, or by *scire facias*, upon information brought by her majesty's attorney-general, or solicitor-general, or any other officer duly authorized for that purpose.—*Ibid.*

**1036.** The information is served upon the person who holds or relies upon such letters-patent, and is heard, tried and determined in the same manner as ordinary suits.—*Ibid.* § 2.

**1037.** An appeal lies from the final judgment rendered upon such information, provided the writ of appeal issues within forty days from the rendering of the judgment.—*Ibid.* s. 6.

**1038, 1039.** These two articles have been repealed by sec. 33 of cap. 11, 32 Vic., Q. "An act respecting the sale and management of the Public Lands," by which another remedy is provided.

## CHAPTER TWELFTH.

### OF HABEAS CORPUS AD SUBJICIENDUM IN CIVIL MATTERS.

**1040.** Any person who is confined or restrained of his

liberty, otherwise than from some criminal or supposed criminal matter, or any other person on his behalf, may apply to any one of the judges of the court of queen's bench, or of the superior court, for a writ addressed to the person under whose custody he is so confined or restrained, ordering the latter person to bring him before the judge who granted the writ, or before any other judge of the same court, together with the cause of his detention, in order to examine whether such detention is justifiable.—C. S. L. C., c. 65, ss. 20, 25.

**1041.** The application must be supported by an affidavit, shewing that there are probable and reasonable grounds for the application.—*Ibid.*

**1042.** The writ issues in the name of the sovereign, is sealed with the seal of the court to which the judge belongs, and is attested in the same manner as any other writ. It is returnable without delay, unless a term of the court is so near that the writ cannot be executed before such term, in which case the judge may order the writ to be returned during term; and if the end of the term be so near that the writ cannot properly be executed during the term it may be made returnable during the following vacation.—*Ibid.* & s. 21, § 2.

**1043.** The writ is served personally, or at the place where the person is confined or restrained, speaking to a domestic servant or an agent of the person to whom it is

addressed, and leaving the writ itself; and the return of service is made upon a certified copy.—*Ibid.* s. 21.

**1044.** In default of compliance with the writ of *habeas corpus*, the person upon whom it was served is held to be guilty of a contempt of the court under whose seal the writ issued, and the judge may grant a rule under the seal of the court, returnable before such judge or before the court, for his imprisonment.—*Ibid.*

**1045.** Upon the return of the writ of *habeas corpus*, or of the rule mentioned in article 1044, the judge proceeds, as soon as he conveniently can, to examine, by means of depositions under oath or affirmation, into the truth of the facts alleged, and decides accordingly.—*Ibid.* s. 22.

**1046.** If the judge before whom the writ is returned in vacation is in doubt as to the truth of the facts alleged in the return, he may admit to bail the person so confined or restrained, upon his entering into recognizance with one or more sureties, or, in the case of infancy or coverture, upon security being given by recognizances, in a reasonable sum, for his appearance before the court on a fixed day during the next term, and from day to day, to abide such order as the court may make.—*Ibid.* s. 22, § 2.

**1047.** The writ of *habeas corpus* is thereupon transmitted to the court, together with the

recognizance and all the papers connected with the application, and the court thereupon makes such orders as to justice may appertain.—*Ibid.* § 3.

**1048.** The court may direct one or more written issues for the trial of the facts alleged in the return, and such issues are tried [either by affidavit or by the examination of witnesses before the court or judges, as such court or judge may think proper.—]*Ibid.*

**1049.** The same proceedings are had in term in the court of queen's bench and in the superior court, respectively, for controverting the truth of the return.—*Ibid.* s. 23.

**1050.** The court or the judge may pronounce upon all costs incurred in the issuing, contestation or execution of the writ of *habeas corpus*.—*Ibid.* s. 24.

**1051.** Whenever a writ of *habeas corpus* has been once refused by any judge, the application for it cannot be renewed before him or before any other judge unless new facts are alleged; but the application may be renewed before the court of queen's bench at its next sitting in appeal at the place where appeals are brought from the district in which the application is made.—*Ibid.* s. 28.

**1052.** The provisions of this chapter cannot be extended to the discharge of any person imprisoned for debt or under any action or process in civil matters.—*Ibid.* s. 25.

## BOOK THIRD.

## OF THE CIRCUIT COURT.

## TITLE FIRST.

## POWERS AND JURISDICTION OF THE COURT.

**1053.** The circuit court has ultimate jurisdiction to the exclusion of the superior court:

1. In all suits wherein the amount or the value of the thing demanded is less than one hundred dollars, saving the exceptions contained in the following article, and such cases as fall exclusively within the jurisdiction of the court of vice-admiralty;

2. In all suits for school taxes or school fees, and all suits concerning assessments for the building or repairing churches, parsonages, and church-yards, whatever may be the amount of such suits.

**1054.** *Except in the districts of Quebec and Montreal,\** the circuit court has original jurisdiction, to the exclusion of the superior court, but subject to appeal:

1. In all suits in which the sum or the value of the thing

demanded amounts to or exceeds one hundred dollars, but does not exceed two hundred dollars, saving the exception contained in the second paragraph of the preceding article;

2. In all suits for fees of office, duties, rents, revenues, or sums of money payable to the crown, or which relate to any title to lands or tenements, to annual rents, or such like matters whereby rights in future may be bound, even though the amount claimed be under one hundred dollars.—C. S. L. C., c. 77, s. 39;—c. 79, ss. 1, 2;—c. 15, s. 123.—Grange & Dupont, appeal, 8th Sept., 1865.

**1055.** [The circuit court may take cognizance, upon evocation, of any suit brought before the commissioners' court for the summary trial of small causes, in the cases seasonally enumerated in the preceding article.]—C.S.L.C., c. 94, ss. 29, 30.

**1056.** The circuit court has also concurrent jurisdiction

\* 34 Vic., c. 4, s. 9, Q. See too 35 Vic., c. 6, s. 35, Q.

with the superior court, by means of *certiorari*, over judgments rendered, within the limits of the district or circuit for which it is held, by the commissioners' court mentioned in the preceding article, or by justices of the peace, wherever a *certiorari* lies.—C. S. L. C., c. 79, s. 3, § 2.

**1057.** It has also an appellate jurisdiction over judgments rendered by a commissioners' court or by justices of the peace, for taxes, assessments or penalties, imposed under the municipal road act of Lower Canada.—C. S. L. C., c. 24, s. 67.

**1058.** Whenever any suit or action relates to fees of office, rights, rents, revenues or sums of money payable to the crown; titles to lands or tenements; annual rents or other matters by which rights in future may be affected, the defendant may, before pleading to the merits, evoke the suit or action, and require it to be removed to the superior court in the same district for hearing and judgment.—C. S. L. C., c. 83, s. 178.—The declaration of evocation is filed in the record which is thereupon removed to the office of the prothonotary, and the superior court determines in a summary way whether the evocation is well founded or not; in the former case the court tries the cause and renders judgment therein, and in the latter case the cause is sent back to the circuit court. If, in any cause susceptible of being evoked, the defendant in his defence disputes or

calls in question the plaintiff's title to any immovable, in such a manner as might impair or injuriously affect the plaintiff's rights in future, the latter may evoke the suit, and proceedings are then had as in cases of evocation by the defendant.

**1059.** \* The rules contained in the first part of this code, and in the first book of the second part part of this code, namely:—in the preliminary provisions;—in the third, fourth, fifth, sixth, seventh, and eighth chapters of title first;—in the first, second and third chapters of title second;—in the first chapter, and in sections 1, 3, 4, 6, 7, and §§ 1, 12 of section 5, of the second chapter of title third;—and in the second book, in the second, third, fourth and fifth chapters of title first, — apply in like manner to the circuit court, except as regards trial by jury and such rules as are inconsistent with the provisions of the present book, and such as can only apply to the superior court.—All the powers conferred upon the superior court, or upon the judges and officers thereof, respectively, relatively to matters within their jurisdiction, are also conferred upon the circuit court, within the limits of its cognizance, and upon the judges who hold such court and upon the officers of the said court respectively, with regard to the same matters

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\* The circuit court does not sit in terms in the city of Montreal.—35 Vic., c. 6, s. 7, Q.



and the other matters which form the subject of the present book, or with regard to any other matter concerning the manner of conducting suits, actions or proceedings in the circuit court.—Whatever may or must be done by the prothonotary as regards proceedings in the superior court, may or must be done in like manner by the clerk of the circuit court, as regards proceedings before the latter court, except, however, the judicial powers conferred upon the prothonotary in the absence of a judge.—The clerk of the circuit court has the power of administering oaths whenever they are required by law or by rules of practice.—C. S. L. C., c. 79, ss. 3, 4.

**1060.** All commissioners and other persons authorized to receive affidavits to be used in the superior court, have also like powers with regard to the circuit court.—*Ibid.* s. 26.

**1061.** The circuit court for any district is held at the same place as the superior court, and its jurisdiction extends over the whole district, and is designated by the name of such district.—It cannot, however, grant more costs against a defendant than he would have had to pay if he had been sued before the circuit court in the county in which he resides, and in which the cause of action originated.—*Ibid.* s. 5; c. 83, s. 152.

**1062.** It may also, upon proclamation of the governor, be held in any other county than that in which the su-

perior court for the district is held, excepting the counties of Hochelaga, Jacques Cartier, Laval, St. Maurice, and Quebec; \* or in more than one place in certain counties, as provided in chapter seventy-nine of the consolidated statutes of Lower Canada.—The court is then designated as “the circuit court in and for the county of—” (*naming the county*) and if there are more than one in the same county, the words “at—” (*naming the place of sitting*) are added to such designation.—C. S. L. C., c. 79, ss. 6, 7, 9.†

**1063.** The circuit court for a county has jurisdiction over the whole extent of such county, even when more than one place therein is appointed for its sittings.—*Ibid.* s. 11.

**1064.** When it is necessary for the despatch of business, the circuit court at any place must be held by two or more judges of the superior court, residing in the same district, simultaneously but in separate apartments.—*Ibid.* s. 15.

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\* This article has been amended by removing from the list of excepted counties that of “Wolfe.”—32 Vic., c. 21, s. 1, Q.

† The lieutenant governor may abolish any county circuit court.—35 Vic., c. 6, s. 23, Q.

## TITLE SECOND.

## ORDINARY PROCEDURE.

## CHAPTER FIRST.

## OF SUMMONS.

**1065.** The provisions concerning summonses for the superior court apply equally to the circuit court, saving the provisions hereinafter contained.\*—C. S. L. C., c. 83, ss. 42, 169, 170.

\* Form No. 35.

Lower Canada,  
District (or Circuit) } In the  
of— } Circuit  
Court.

A.B., of—, &c., plaintiff; and  
C.D., of—, &c., defendant.

[L.S.] VICTORIA, by the Grace  
of God, of the United King-  
dom of Great Britain and  
Ireland, Queen, Defender of  
the Faith:

To C.D., the defendant above  
mentioned.

Whereas A. B., the plaintiff  
aforesaid, demands of you the  
sum of — due by you to him  
for (*state sufficiently the cause  
of action*) which said sum you  
have (as he saith) refused to  
pay him. (*If the action be to  
recover a thing wrongfully de-  
tained, &c., vary the statement  
of the cause of action accord-*

**1066.** The delay upon sum-  
mons is five intermediate days,  
when the distance from the  
defendant's domicile to the  
place where the court is held

*ingly. If there be a declaration  
annexed, refer to it; and omit-  
ting the words after "the plain-  
tiff aforesaid," say "hath, by  
his declaration hereunto an-  
nexed, made complaint against  
you in the manner therein set  
forth."*) And the plaintiff prays  
judgment accordingly.

You are therefore required  
to satisfy the demand of the  
said plaintiff in this cause,  
with costs, or to appear in per-  
son or by your attorney before  
our said court, at the court  
house, at — in the said cir-  
cuit, at — o'clock in the fore-  
noon, (*omit these words if the  
case be appealable*), on the—  
day, of — instant (*or next*),  
to answer the said demand;  
otherwise judgment may be  
given against you by default.

In witness whereof, we have  
caused the seal of our said  
court to be hereunto affixed, at  
— this — day of — in the  
year of our Lord, one thousand  
eight hundred and —.

E. F.  
Clerk of the said court for the  
said district (or circuit.)

does not exceed five leagues, with the ordinary extension when the distance is greater.—*Ibid.* s. 170, § 2.

**1067.** When the writ of summons is to be served in another district, it may be addressed to the sheriff or to a bailiff of such other district.—It may also be so addressed when it is to be served in more than one district.—In the latter case, as many originals of the writ of summons must be issued as there are districts in which it requires to be served.—*Ibid.* ss. 170, § 4, 171.

**1068.** In the case mentioned in article 1067, the writ of summons issuing from the circuit court of a district may be served by any bailiff of such district; but he is entitled to no more costs than if the service had been effected by the nearest bailiff to the residence of the defendant thus summoned.—*Ibid.* s. 172.

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## CHAPTER SECOND.

### PROVISIONS CONCERNING APPEALABLE CASES.

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#### SECTION I.

##### *Proceedings before Contestation, or in Uncontested Suits.*

**1069.** The provisions respecting appearance and default, election of domicile, judgments by default or upon confession, filing of exhibits

and proofs *ex parte*, in the superior court, apply also to appealable cases in the circuit court.—C. S. L. C., c. 79, s. 27; c. 83, s. 42.

#### SECTION II.

##### *Of Contestation.*

**1070.** The contestation and pleadings in appealable cases in the circuit court are subject to the provisions concerning the same matters in the superior court, except as regards the delays, which are regulated as follows:—The delay for filing preliminary exceptions is four days, and that for answering the same is five days.—The delay for filing any other pleading necessary to complete the issues is five days.—The delay for pleading to the merits is five days from the appearance of the defendant. If no plea be filed within these delays or afterwards within the three days after the service of a demand of plea, the party in default is foreclosed by an act of the clerk of the court without any other proceeding. There is a like delay of five days, on pain of foreclosure, between each subsequent pleading allowed by law, without any demand of plea being necessary.—C. S. L. C., c. 83, s. 180.

#### SECTION III.

##### *Of Proof and Hearing.*

**1071.** Proofs may be made on every day during a term of the circuit court.—*Ibid.* s. 181.

**1072.** Contested cases are inscribed at the same time for proof and for hearing on the merits.—*Ibid.* s. 182.—25 Vic., c. 10, s. 11.

**1073.** Notice of such inscription must be given to the opposite party, with one intermediate day's delay if notice is given in term, and four intermediate days if it is given in vacation.—C.S.L.C., c. 83, s. 184.

**1074.** The evidence is given orally, without notes thereof being taken, unless, before the commencement of the proof, the parties, or one of them, files a declaration in writing, requesting that notes of the evidence be taken down in writing, in which case it is taken in the manner provided for proofs before the judge in the superior court.—After the witnesses have been examined, the parties are heard upon the merits, unless the court deems it advisable to adjourn the case on account of the absence of some material witness or evidence.—*Ibid.* s. 182.—25 Vic., c. 10, s. 11.

**1075.** [With the consent of all the parties the proof may take place on any juridical day in or out of term, and may be written down at length, and the clerk of the circuit court may receive the depositions and swear the witnesses in the absence of the judge; or it may be taken before an examiner; in each case according to the rules and in the manner prescribed for the superior court.]\*

\* Evidence may be taken before a commissioner. See note to art. 240 *ante*.

**1076.** No person residing at a distance of more than fifteen leagues from the place where the proof is to be taken, or beyond the limits of the circuit, is bound to attend as a witness, unless he is summoned in conformity with the provisions contained in articles 246 and 247.—C. S. L. C., c. 83, s. 186.—C. S. C., c. 79, s. 12.

**1077.** Whenever a demurrer has been filed, the case may, nevertheless, be inscribed for proof and hearing, reserving the argument upon the law issues until after the proof.—C. S. L. C., c. 83, s. 183.

**1078.** The court may at any time order the proof to be had, or a witness or a party to be examined in another circuit, and may order that the record, or a part thereof, be transmitted for that purpose, according to the provisions contained in article 241.—*Ibid.* s. 185.

#### SECTION IV.

##### *Of Judgments.*

**1079.** The provisions which relate to judgments and to costs in the superior court apply also to judgments rendered in the circuit court.—*Ibid.* s. 42.

**1080.** Whenever the judge who heard the case is unable, by reason of sickness or other cause, to render judgment in person, he may transmit the draft of the judgment, certified by himself, to the clerk, who is thereupon bound to record the same and to read it in open court on the next juridical day in term; and the judgment has

then the same force and effect as if it had been pronounced by the judge on the day on which it was thus read.—C. S. L. C., c. 79, s. 16. See 38 Vic., c. 10, Q., cited at art. 468 *ante*.

## SECTION V.

### *Of the Execution of Judgments.*

**1081.** [Writs of execution for the payment of a sum of money issue against the movable property of the debtor situated either in the district in which the judgment was rendered or in any other district. In the first case it is addressed to a bailiff, who is empowered to levy the amount in conformity to the rules prescribed for seizures by the sheriff, without however being entitled to demand or retain any commission on the moneys levied. In the second case the writ may be addressed either to the bailiff in like manner, or to the sheriff of such other district.]\*—C. S. L. C., c. 83, s. 201.—Ord. 1667, tit. 33, art. 4.

**1082.** If it appears by the return to such writ that the debtor has not, in the district in which the judgment was

rendered, sufficient movables and effects to satisfy the judgment, the creditor may obtain another writ to be executed upon any movable property and effects of the debtor situate in another district, and such writ is addressed to the sheriff or to any bailiff of such district, and executed accordingly and returned to the circuit court.—*Ibid.* ss. 204-5.—33 Vic., c. 17, s. 1, Q.

**1083.** All oppositions to an execution against movable property, whatever may be the amount or the value of the thing claimed, are within the jurisdiction of the court which issued the writ.—*Ibid.* s. 208.

**1084.** An order to stay execution in consequence of an opposition to the seizure and sale, may be granted by the judge, either within or beyond the limits of the circuit, or by the clerk, and for that purpose the judge and clerk are empowered to administer the necessary oath, and the bailiff on being notified, by the delivery to him of a copy of the opposition and of the order, is bound to return forthwith the writ and his proceedings thereon to the court from which such writ issued.—*Ibid.* s. 208.

**1085.** [In default of movable property and effects, the judgment may be executed upon such immovables of the debtor as are within the limits of the district in which the judgment was rendered, or in any other district.]

**1086.** [The writ for that purpose is addressed to the sheriff of such district, and is

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\*This article was amended by 35 Vic., c. 6, s. 24, Q., which did away with the necessity of electing a domicile for the judgment creditor. The writ may be addressed either to the sheriff or a bailiff. See note to art. 48 *ante*.—33 Vic., c. 17, s. 1, Q.

returnable to the superior court of such district.]—*Ibid.* s. 203.

**1087.** In the case of an immovable which is declared by judgment to be hypothecated, and has been surrendered, or in cases of arrears of rents constituted under the seigniorial act of 1854, whatever may be the amount thereof, a writ of execution may issue immediately against such immovable, addressed to the sheriff of the district in which it is situated.—*Ibid.* s. 206, § 2.

**1088.** All proceedings incidental to the seizure or sale of the immovables seized in virtue of the foregoing provisions are carried on before the superior court into which the writ of execution is returnable, in the same manner as if the judgment had been rendered by such court.—*Ibid.* s. 203, § 3; s. 206.

**1089.** In other respects the formalities of the seizure and the sale of movables are the same as upon executions of judgments of the superior court, and the provisions concerning seizure by garnishment after judgment in the superior court apply likewise to such seizures issuing from the circuit court.

**1090.** Upon the return into the superior court of a writ of execution against immovables, granted by the circuit court, the former court may order the clerk of the latter to transmit the original record in the case, that it may serve for all legal purposes.—*Ibid.* s. 207.

## SECTION VI.

### *Of Remedies against Judgments.*

**1091.** Any party who deems himself aggrieved by a judgment of the circuit court may obtain a rehearing of the case before three judges of the superior court, according to the provisions contained in articles 494 to 504.—27 & 28 Vic., c. 39, s. 20.

**1092.** Such party has likewise a remedy by appeal, in conformity with the provisions contained in the fourth book of this code.—C. S. L. C., c. 77, s. 39.

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## CHAPTER THIRD.

### PROVISIONS PARTICULAR TO NON-APPEALABLE CASES.

**1093.** When a non-appealable case is returnable during term in the circuit court, the defendant is bound to appear in open court on the day and at the hour specified, without having a delay until the next day to file his appearance.—C. S. L. C., c. 83, s. 189.

**1094.** If the judge is absent the case may be called, and appearance or default recorded by the clerk.—*Ibid.* § 2.

**1095.** Confessions of judgment may be given orally in open court; or out of term pursuant to the provisions contained in articles 94 and following, and judgment may be rendered accordingly.—25 Vic., c. 10, s. 10.

*On any day during a term, or the time fixed for a holding thereof, if the judge is absent or cannot hold the court on that day, such confessions may be given in the same manner as out of term.*—34 Vic., c. 4, s. 11, Q., 1870.

**1096.** If the defendant fails to appear, the plaintiff may forthwith proceed with his proof, and the court may thereupon render judgment accordingly.—C. S. L. C., c. 83, s. 189 § 3.

**1097.** If the case is returnable in term, the defendant, upon appearing, is bound to plead forthwith. He may do so in writing or orally, at his option, unless the court orders that the pleas shall, within a fixed delay, be made out in writing; but the plaintiff is not bound to answer in writing unless the court so orders.—*Ibid.* s. 190.

**1098.** If the defendant does not plead in writing, he is called upon by the court to specify what allegations of the declaration he admits, and such admissions are recorded. If he makes no such admissions he is held to have denied all the facts alleged, and is liable for the costs of proving such of them as may be proved. No other articulation of facts is required.—*Ibid.* § 2; s. 93 § 2.

**1099.** If the action is returnable in vacation, the proceedings with respect to appearance, default, judgment by default and relief therefrom, confession of judgment, written pleadings and the inscription of the case, are the same as in

appealable cases; but no demand of plea or of answer is necessary in order to obtain a foreclosure; the notice of inscription for proof and hearing must be given at least three days beforehand; and if the defendant fails to appear or to plead, the plaintiff is not bound to give notice of the inscription of the case for proof, when such proof is necessary.—*Ibid.* ss. 192-3-4-5-6-7.

**1100.** [If the defendant fails to appear or to plead in any case returnable in term, the plaintiff may at any time proceed to judgment in the same manner as if the action were returnable in vacation.]

**1101.** The proof in all cases is made orally and in open court, without its being necessary to take notes of the evidence.—*Ibid.* s. 191.

**1102.** Judgments for sums not exceeding forty dollars can only be executed upon the movable property of the debtor, except in the case of hypothecary actions, or of rents created under the seigniorial act of 1854, in which cases the court may issue execution against the immovable charged according to the formalities prescribed in the preceding chapter.—*Ibid.* s. 202.

**1103.** The provisions concerning oppositions and stay of proceedings, contained in the preceding chapter, as well as those concerning seizures by garnishment after judgment, must also be observed in non-appealable cases.—*Ibid.* s. 208.

**1104.** All non-appealable suits are determined in a sum-

mary manner, and when the amount claimed does not exceed twenty-five dollars they are decided according to equity and good conscience. The provisions of article 1030 apply to non-appealable cases—C.S.L. C., c. 79, s. 2, §§ 2, 3.

## TITLE THIRD.

### OF SUITS BETWEEN LESSORS AND LESSEES.

**1105.** The circuit court has jurisdiction in cases between lessors and lessees, whenever the rent, or the annual value, or the amount of damages claimed, does not exceed two hundred dollars.—C. S. L. C., c. 40, s. 4.—25 Vic., c. 12, s. 1.\*

**1106.** The provisions contained in the first chapter of title second of the second part of this code apply to suits brought before the circuit court.

## TITLE FOURTH.

### SUITS IN CASES OF ILLEGAL DETENTION OF LANDS HELD IN FREE AND COMMON SOCCAGE.

**1107.** Concurrently with the jurisdiction of the superior court in such matters, petitory or possessory actions against persons illegally detaining lands held in free and common soccage in the townships may be brought before the circuit court in the circuit within which such lands are situated, or out of term before a judge of the superior court, who may hear and determine such suits in vacation, as the circuit court might also do, whatever may be the value of the lands; and the proceedings in all such cases form part of the records of the circuit court.—C.S.L.C., c. 45, ss. 1, 10.

**1108.** The plaintiff in any such suits may add conclusions for the rents, issues and profits

\* *Held*—That an action to resiliate a lease, where arrears of rent or damages are also claimed, must be brought in the superior or circuit court, according as the amount of rent or damages claimed is within the jurisdiction of the superior or circuit court.—Voisard & Saunders.—1 L. N., p. 41.



of such lands, and for any other damages he may have suffered.—*Ibid.* s. 11.

**1109.** Such suits are subject to the same provisions as other appealable cases in the circuit court, as regards summons, pleading and proof.—*Ibid.* s. 5.

**1110.** The defendant may plead all matters of defence, even adverse title, and may also claim, by incidental demand, whatever sum he may be entitled to for improvements made upon the lands.—*Ibid.* ss. 3, 12, 15.

**1111.** [If either of the parties is aggrieved by the judgment he may inscribe the case for hearing before three judges of the superior court, according to the provisions contained in articles 494 and following, and without prejudice to the right of appeal to the court of queen's bench.]—*Ibid.* ss. 1, 2.

**1112.** The judgment may, when the plaintiff is entitled to it, declare him owner of the lands in question, and order the defendant to restore them to him within twenty days from service of judgment, and such judgment may be carried into effect by means of a writ of possession, as prescribed in articles 549 and 550.—*Ibid.* s. 6.

**1113.** An appeal lies from such judgment to the court of queen's bench, in the same manner as any other appeal from the circuit court; nevertheless, the security must be by two sureties, upon real property to the value of two hundred dollars each; and the petition must be served within fifteen days after the judgment, and be presented on the first day of the term next after the expiration of such fifteen days.—25 Vic., c. 10, s. 7.

## BOOK FOURTH.

### COURT OF QUEEN'S BENCH (APPEAL SIDE.)

#### CHAPTER FIRST.

##### OF ERROR AND APPEAL FROM JUDGMENTS OF THE SUPERIOR COURT.

**1114.** Error may be brought, by means of a writ of error, against any judgment of the superior court founded upon a

general verdict given by a special jury.—It must be brought before the court of queen's bench sitting in appeal.—Questions of law only can be argued in error.—O. S. L. C., c. 77, ss. 4, 24; s. 83, ss. 32, 41.—Casey & Goldsmid, 2 L. C. R. 212.

**1115.** An appeal lies to the

same court upon any other final judgment rendered by the superior court, except in cases of *certiorari*, and in matters concerning municipal corporations or offices, as provided in article 1033. *And except also in cases, for an amount not exceeding two hundred dollars, in which the judgment has been confirmed in review before three judges.*—34 Vic., c. 4, s. 12, Q. And see also 37 Vic., c. 6, Q., 1873-4, cited after art. 504 *ante*.—C. S. L. C., c. 77, s. 4; c. 83, ss. 17, 41; c. 89, ss. 6, 17.

**1116.** An appeal also lies from interlocutory judgments in the following cases:

1. When they in part decide the issues;

2. When they order the doing of anything which cannot be remedied by the final judgment;

3. When they unnecessarily delay the trial of the suit.\*—C. S. L. C., c. 77, ss. 23, 26 § 3.

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\* An appeal will not be allowed from an interlocutory judgment dismissing a demurrer to a declaration.—Benning & Grange, 13 L. C. Jurist, 153.

Nor from an interlocutory judgment permitting evidence to be made though such evidence is clearly illegal.—*Curé & Marguilliers, de Beauharnois vs. Robillard*, Q. B., Montreal, 27 January, 1876, nor from a judgment by which costs are not allowed on an amendment to a declaration.—*The Windsor Hotel Co. vs. Murphy*, Q. B., Montreal, Sept. 1877.

**1117.** Proceedings in error or appeal from judgments rendered in the districts of Montreal, Ottawa, Terrebonne, Joliette, Richelieu, St. Francis, Bedford, St. Hyacinthe, Iberville and Beauharnois, are brought, heard and determined in the city of Montreal, and the writ is made returnable there, and the like proceedings against judgments rendered in the districts of Quebec, Three Rivers, Saguenay, Chicoutimi, Gaspé, Rimouski, Kamouraska, Montmagny, Beauce and Arthabaska, are brought, heard and determined in the city of Quebec, and the writ is made returnable there.—*Ibid.* s. 22.

**1118.** [Proceedings in error or in appeal must be brought within a year from the date of the judgment, saving the cases provided for by articles 823, 1033 and 1037; this delay of a year is binding even upon minors, women under coverture, persons of unsound mind or interdicted, and upon persons absent from Lower Canada, when those who represent them, or whose duty it is to assist them, have been duly brought into the suit.—If the party dies before appealing, the delay is reckoned only from the day of his death, against his heirs or legal representatives.—Proceedings in error or in appeal, cannot, however, be taken during the delay allowed for demanding a review before three judges, nor during the proceedings for such review.—*Evanturel vs. Evanturel*, 17 L. C. Rep., p. 223.

In cases of judgment by de-

fault in vacation, the delay for appealing runs only from the expiration of the time allowed for filing an opposition thereto.]—*Ibid.*, ss. 27, 55; c. 83, s. 128.—27 & 28 Vic., c. 39, s. 22.

*Notwithstanding article 1118 of the said code, proceedings in error or appeal may be taken during the delay allowed for demanding a review before three judges, or after proceedings in review have been commenced if the party who has taken such proceedings discontinues the same.*—34 Vic., c. 4, s. 13, Q., 1870.

**1119.** If the appeal is from an interlocutory judgment, it must first be allowed by the court of queen's bench, upon a motion, supported with copies of such portion of the record as may be necessary to decide whether the judgment in question is susceptible of appeal, and falls within one of the cases specified in article 1116.—The motion must be made during the term next after such rendering of the judgment, and cannot be received afterwards; saving, however, the party's right to urge his reasons against such judgment upon an appeal from or proceedings in error against the final judgment.—C. S. L. C., c. 77, s. 26, § 4.—27 R. of P., Q. B.

**1120.** The motion must be served upon the opposite party, and, if required, is followed by a rule, calling upon such opposite party to give his reasons against the granting of the appeal; and the service of such rule upon him has the effect of

suspending all proceedings before the court below.—*Ibid.*, §§ 4, 5.

**1121.** Proceedings in error or in appeal are brought by means of a writ, in the English or in the French language, issued from the court of queen's bench, upon the written demand of the party aggrieved, containing the names and description of the parties in the suit before the court below, and mentioning the place and time at which the judgment was rendered.—It is addressed, in the name of the sovereign, to the judges of the superior court, commanding them to send up, within twenty days, the record in the case, together with a transcript of all entries made in such case in the registers of the superior court and of the judgment; it is signed by the clerk of appeals or his deputy, and sealed with the seal of the court of queen's bench; but this latter formality is not required on pain of nullity.—If the appeal is from an interlocutory judgment, the clerk must endorse upon the writ that it is issued by order of the court.—C. S. L. C., c. 77, ss. 26, 28.—7 R. of P., Q. B.

**1122.** The delay for returning the writ may be extended, according to the distance between the place where the judgment was rendered and the place where the writ is to be returned.—7 R. of P., Q. B.

**1123.** The writ of error or of appeal must be served upon the opposite party by leaving a copy with him or at his domi-

cile,\* or with his attorney *ad litem* in person; and it must afterwards be deposited with the prothonotary of the court by which the judgment was rendered.—A return of such service and deposit must be made by the bailiff upon an authentic copy of the writ of appeal or error, which copy must be filed in the office of the clerk of appeals.—8 R. of P., Q.B.

**1124.** The appellant or plaintiff in error must, before the record can be sent up, give good and sufficient security that he will effectually prosecute the appeal or proceedings in error, and that he will satisfy the condemnation and pay all costs and damages adjudged, in case the judgment appealed from is confirmed; † or else he must declare in writing at the office of the prothonotary of the court, whose judgment is appealed from, that he does not object to the judgment rendered against him being executed according to law, in which case he is only bound to give security for the payment of the costs in appeal, if he fails; and if the judgment is reversed the respondent who has caused the

judgment to be executed is bound to refund to the appellant the net amount only of the moneys levied by execution, together with legal interest; or to restore the property of which he was put in possession, together with the rents, issues and profits since.—C. S. L. C., c. 77, ss. 23, 42-3.

**1125.** The security must be received before one of the judges or the prothonotary of the court in which the judgment was rendered; and such judge or prothonotary may swear the sureties offered and ask them any pertinent questions with respect to their sufficiency.—*Ibid.* ss. 29, 41.

**1126.** As soon as the sureties have been received and the bond has been formally executed, it is the duty of the prothonotary of the court in which the judgment was rendered to make up and complete the record in the case, according to the forms prescribed by the court of appeal, with a list of all the papers which form part of it, and a transcript of all the entries in the registers, and, upon being paid his fees, charges and costs of transmission, to send them up to the court of appeals; and such return shall be certified on the back of the writ by the judge or by the prothonotary.—*Ibid.* s. 31.—9 & 10 R. of P., Q.B.

**1127.** If the writ of error or of appeal is not returned on the day fixed, the appellant may obtain a rule against the prothonotary in whose hands it is, ordering him to return it.—The respondent in such case

\* This copy is certified by the attorney of party suing out same.—*Morrison vs. Dam-bourges*, 11 L. C. Jurist, 126.

† The court of appeal may allow the bond to be amended and completed.—*Taylor vs. Molleur*, 17 L. C. Rep. 376.

cannot be condemned if he fails to appear; and if the prothonotary is in default, a new writ must be issued and served in the same manner as the first, without lapse of the proceedings already had.—*Archambault & Roy dit Picott*, in appeal, 1851.

**1128.** The appellant and the respondent are both bound, if the writ is returned within the proper delay, to file an appearance in the office of the clerk of appeals, before the expiration of the eight days next after the day fixed for the return of the writ and record, on pain of being foreclosed.—11 R. of P., Q. B.

**1129.** In default of the writ and the record being returned on the day fixed, the respondent, upon producing the copy served upon him, may obtain judgment of nonpross and be discharged from the appeal, unless the appellant proves diligence.\*

**1130.** [Unless the court otherwise orders, the respondent may, within eight days next after the period allowed for filing his appearance, set up by motion all grounds of exception or of demurrer, and all grounds of defence resulting from :

1. Informalities in the issuing or service of the writ;

2. Insufficiency of the appeal bond;

3. Non-existence or forfeiture of the right to proceed by error or appeal;

4. Acquiescence in the judgment;

5. The renunciation of the judgment in the court below.]

—C. S. L. C., c. 77, s. 5.—*McNaughton vs. Desautels*, in appeal.

**1131.** The appellant may apply by motion for a reduction of excessive security, if he has been obliged to give it.—C. S. L. C., c. 77, s. 5.—27 G. III., c. 4, s. 6.

**1132.** If both parties seek redress against the judgment, their cross-proceedings in error or in appeal may be joined.

**1133.** The appellant must file his reasons of appeal or assignment of error within eight days after the return of the writ and record; he cannot, however, be foreclosed from doing so until the expiration of another delay of six days, counting from the demand thereof.—C. S. L. C., c. 77, s. 32.—12 R. of P., Q. B.

**1134.** If, however, there are demurrers to the proceeding in appeal or error, the demand of reasons cannot be made before the judgment upon the demurrers.

**1135.** The respondent has a like delay of eight days to answer the reasons of appeal or error; but he cannot be foreclosed from doing so until after another delay of four days from the demand of such answer.—C. S. L. C., c. 77, s. 33.—13 R. of P., Q. B.

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\* This motion may be made, even though no appearance has been filed by respondent. *Furniss & The Ottawa Forwarding Co.*, queen's bench, *appeals*, Montreal, Sept., 1875.

**1136.** The court, or a judge in vacation, upon application, of which the opposite party has had notice, may, for good cause shown, prolong the delays fixed by the two preceding articles.—C. S. L. C., c. 77, s. 33.

**1137.** If the reasons in appeal or error are not filed within the delay prescribed, the respondent may demand the dismissal of the appeal or proceedings in error, with costs.—*Ibid.* s. 32.

**1138.** If the respondent fails to file his answer within the delays prescribed, he is foreclosed from doing so, and the appellant may proceed as if the respondent had not appeared.—*Ibid.* s. 33.

**1139.** The provisions concerning election of domicile by parties and their advocates and attorneys in the superior court apply also in matters before the court of queen's bench.

**1140.** Within ten days after the filing of the respondent's answers, each party must file in the clerk's office a printed *factum*, or case, and, in default of his doing so, the proceedings in appeal or error may be declared to have been abandoned with costs against the appellant if he is in default, or the case may be heard *ex parte* if the respondent is in default.—*Ibid.* s. 49.—14 R. of P., Q. B.

**1141.** As soon as the answers are filed, either party may, after filing his *factum* or case, inscribe the case on the roll for hearing, after the delay for filing *factums* has expired, upon giving the opposite party at least two days notice before

the case is called.—15 R. of P., Q. B.

## CHAPTER SECOND.

### OF APPEALS FROM THE CIRCUIT COURT.

**1142.** An appeal lies to the court of queen's bench from any judgment rendered by the circuit court, in the following cases:—

1. When the sum or the value of the thing demanded amounts to or exceeds one hundred dollars; except, however, in suits for the recovery of assessments for schools or school-houses, or for monthly contributions for schools, and in suits for the recovery of assessments imposed for the building or repairing of churches, parsonages and church-yards. Cases in which the evidence has not been taken down in writing can only be appealed on points of law;

2. When the demand is less than one hundred dollars, but relates to fees of office, duties, rents, revenues or sums of money payable to her majesty;

3. When the demand, though less than one hundred dollars, relates to titles to lands or tenements, annual rents, or other matters in which the rights in future of the parties may be affected;

4. In all actions in recognition of hypothecs.—Special provisions regulate appeals from judgments rendered in the Magdalen Islands.—C. S.

L. C., c. 77, s. 39; c. 15, s. 123 § 2; c. 18, s. 25.—25 Vic., c. 10, s. 7.

**1143.** The party appealing must within fifteen days after the rendering of the judgment, but without being bound to give notice, give good and sufficient sureties, who must justify their sufficiency to the satisfaction of the person receiving their security, that he will prosecute the appeal, will answer the condemnation, and pay the costs, in the event of the judgment appealed from being confirmed.—C. S. L. C., c. 77, s. 40.

**1144.** The security may be given either before a judge of the court of queen's bench or the clerk of appeals, or else before a judge of the superior court, or the clerk of the circuit court, at the place where the judgment was rendered, and the bond remains deposited among the records of the court where it was given.—*Ibid.* s. 41.

**1145.** Any one surety suffices if he is the owner of real property of the value of two hundred dollars, over and above all incumbrances upon the same, saving the exception contained in article 1113; and the persons authorized to receive the security have power to administer any oath necessary for that purpose.—*Ibid.*, § 2.—10 L. C. R., 200.

**1146.** If, within the fifteen days, the appellant files with the clerk of either court a declaration in writing that he does not object to the execution of the judgment, or if he deposits the amount thereof in the

hands of the clerk of appeals or clerk of the circuit court, he need only give security for the costs in appeal and whatever damages may be awarded.—*Ibid.*, s. 42.

**1147.** In the case of the preceding article, the provisions of article 1124 also apply.—*Ibid.*, s. 43.

**1148.** The appeal is brought by a petition stating succinctly the grounds of appeal, and that security has been given, and praying for the reversal of the judgment, and the rendering of such judgment as ought to have been rendered.—This petition and a notice of the day on which it will be presented, must, within twenty-five days from the rendering of the judgment, be served upon the opposite party personally, or at his domicile, or upon his attorney *ad litem*, together with a copy of the appeal bond, certified by the clerk with whom it is deposited.—*Ibid.*, s. 44.

**1149.** Within the same delay of twenty-five days, the appellant must file his petition and notice and the return of service with the clerk of the circuit court, together with a certificate from the clerk of appeals, stating that security has been given, if the bond be in the hands of that officer; and the clerk of the circuit court must give the appellant a certificate of such filing, for the purpose of proving, when requisite, that the appeal has been instituted. The clerk of the circuit court is, moreover, bound to certify, under his hand and the seal of the circuit

court, and to transmit to the clerk of appeals at the proper place, the said petition and the record in the case, with a transcript of the entries contained in the registers of the circuit court in relation to such case.—*Ibid.*, s. 45.

**1150.** Before the day on which the appeal may be heard, each of the parties is bound to file an appearance in the office of the clerk of appeals; and the clerk of appeals is bound to record such appearance in the register, or the default thereof, and to enter each case in which the record has been transmitted to him. If the appellant does not appear, his appeal may be declared to have been abandoned, with costs; and if the respondent fails to appear, the appellant may proceed by default.—*Ibid.*, s. 46.

**1151.** The appellant may prove due diligence on his part, and if, on the day fixed, the record and proceedings have not been transmitted, he may proceed against the clerk of the circuit court in the manner prescribed in article 1127.

**1152.** At the first term of the court of queen's bench, sitting in appeal, at the place to which the record has been transmitted, after the expiration of forty days from the rendering of the judgment, or at any subsequent sitting, and without any other formality than the filing of a printed *factum*, if the court requires it, the case is heard in a summary manner, and judgment rendered therein as in any other appeal.—*Ibid.* ss. 47, 49.

**1153** If the appellant fails

to serve and file his petition, or to effectually prosecute his appeal, he may be declared to have forfeited his right of appeal, and be condemned to pay costs.—*Ibid.* s. 48.

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### CHAPTER THIRD.

#### GENERAL PROVISIONS.

**1154.** Proceedings in appeal or error may be brought by the legal representatives of a party to a suit who has died.—Proceedings in appeal or error, upon judgments rendered against an unmarried woman or widow who has since married, may be brought by her husband, jointly with her; or, in the case of a judgment rendered against a party represented by a tutor or curator or other person, but who has since attained full age or come into the exercise of his rights, by such party himself, without the assistance of the tutor or curator who represented or other person who assisted him in the original suit.\*—C.S.L.C., c. 77, ss. 37-8.

**1155.** If one of several appellants or respondents dies after the institution of proceedings in appeal or error, such proceedings may be continued

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\* Parties who have pleaded separately in the court below may appeal jointly by one and the same writ.—Spelman & Robidoux. 12 L. C. Jurist, 227.



by and between the other surviving parties.—*Ibid.* s. 38.—12 Vic., c. 41, s. 18.

**1156.** Four judges of the court of queen's bench constitute a quorum in appeal.—Any lesser number of judges, or even the clerk in the absence of all the judges, may, on any day in term, open and adjourn the court, receive returns and motions of course, call parties, record appearances and defaults, and do all acts which do not require the exercise of any judicial discretion.—C. S. L. C., c. 77, ss. 7, 20 § 3.

**1157.** The judges in cases of appeal or error may be re-used for the same causes and in the same manner as in the superior court.—*Ibid.* s. 11.

**1158.** Any judge who sat in the court below at the rendering of the final or interlocutory judgment appealed from, is incompetent to sit in appeal or error upon the same.—*Ibid.* s. 8.

**1159.** No petition in recusation is necessary if the cause of incompetency appears on the face of the record.—*Ibid.* s. 11.

**1160.** Every leave of absence for more than two months granted to any judge of the court of queen's bench is notified to the clerk of appeals by a letter from the provincial secretary, which must be deposited among the records of the court and entered in the register thereof.—*Ibid.* s. 12.

**1161.** When a judge of the court of queen's bench is disqualified or incompetent to sit in a case, or is suspended from office, or absent from the pro-

vince, or on leave, the clerk of appeals, when thereto required, must record the fact in the register, and upon the order of a judge of the court, must notify the chief-justice of the superior court.—*Ibid.* ss. 10, 11.

**1162.** The judges of the superior court replace those of the court of queen's bench, in all cases of incompetency, absence, suspension, or leave of absence, and upon the chief justice of the superior court communicating with the other judges of the said court, it is arranged between them which of them individually will replace any particular judge of the court of queen's bench, who is unable to sit in the case.—*Ibid.* ss. 10, 11.

The foregoing provisions, as well as those of the preceding article, apply likewise in the case of death, absence, disqualification or incompetency of the judge thus appointed to replace another.

**1163.** The return of the judge replaced, the expiration of his leave, or his ceasing to be incompetent, do not affect the powers of the judge appointed to replace him, as regards cases of which he has taken judicial cognizance, nor are they affected by the appointment of a judge of the court of queen's bench who would not be incompetent in the case.—*Ibid.* s. 13.

**1164.** Nevertheless if the replacing judge has not heard the case upon the merits, the judge thus replaced may take cognizance of the case and

render judgment therein.—29 V. c. 42.

**1165.** If the record in the case is incomplete, either by reason of the absence of any document, or of the inobservance of some important formality, the court of appeals may, upon the suggestion of either party, order the court below to perfect the record, and this is done by an order in the form of a writ issuing in the name of the sovereign, addressed to the judges of the court below, commanding them to do what is necessary, and to make a duly certified return thereof.—*Ibid.* s. 5.

**1166.** Interventions may take place in appeal with the leave of the court, and so may also other incidental proceedings, such as petitions for continuance, disavowals, changes of attorney, and like proceedings, according to the formalities prescribed by the court.—*Ibid.* s. 5.

**1167.** Discontinuance in appeal is effected in the same manner and under the same conditions as in the superior court.—C.S.L.C., c. 82, s. 25.

**1168.** The provisions concerning peremption of suits in the superior court apply also to appeals. Peremption of appeals or of proceedings in error has the effect of rendering the judgment appealed from final.—Pot. P.C., 124.—C.P.C. 469.

**1169.** The parties are bound to be present in court to be heard upon the appeal after the delay mentioned in article 1141.

**1170.** Judgment cannot be

rendered in appeal unless at least three judges concur therein, and judgment may be rendered even in the absence of one judge when the case has been heard before the five judges.—C.S.L.C., c. 77, ss. 9, 14.—25 V., c. 10, s. 1.—[The provisions relative to judgments, contained in articles 503 and 504 apply in similar cases as regards judgments to be rendered by the court of queen's bench.—Whenever a case has been heard by the full court or by a quorum of judges, and at least three of the judges who heard it are present in court and ready to render judgment therein; then if any judge who heard the cause and would be competent to sit in judgment therein be prevented by removal to another court, sickness or other cause from being present, but has addressed a letter to the clerk of the court, containing his decision and signed by him, or has, in testimony of his concurrence therein, signed a written decision drawn up to be delivered and delivered by any other judge, such judge shall be deemed to be present as regards such judgment; and the decision so transmitted and signed by him has the same effect as if delivered and concurred in by him in open court.]

**1171.** If by reason of the absence, leave of absence, disqualification, or incompetency of any of the judges, or any other cause, the order for advisement requires to be discharged, such discharge may

be ordered by the other judges or by any one of them.—C. S. L.C., c. 77, s. 9.

**1172.** The court may adjourn to any day in vacation, and thence from day to day, for the purpose of rendering judgment.—*Ibid.* s. 20 § 2.

**1173.** Judgment may be rendered by the court at another place, where its sittings are held, than that where the case was heard, if the judges are of opinion that otherwise the parties will be exposed to unnecessary delay; but in such case the court in term, or a majority of the judges in vacation, orders the clerk to give the parties interested notice at least six days before that on which judgment is to be rendered, and the judgment is nevertheless entered and registered at the place where judgment would have been rendered in the ordinary course.—25 V., c. 10, ss. 4, 5.

**1174.** Every judgment in appeal or error must contain a summary statement of the points of fact and of law in the case, and the reasons upon which it is founded, with the names of the judges who concurred therein and of those who dissented therefrom, and must adjudicate upon the costs.—C. S. L. C., c. 77, s. 36.

**1175.** The costs are taxed by the clerk of appeals, saving a revision of such taxation by a judge within six months, either in term or out of term, after sufficient notice given to the opposite party, but such revision cannot prevent or stay

execution, and the decision of the judge in that behalf has the same effect as a judgment of the court.—25 V., c. 10, s. 6.

**1176.** Judgments in appeal or error are executed both for principal and costs by the court below, and for that purpose, the record is sent back to it, unless a further appeal to a higher court has been moved for.\*

**1177.** The court sitting in appeal or error may exercise all the powers necessary for such jurisdiction and make such orders as it may deem proper for the purpose of remedying any insufficiencies of the record; of staying proceedings in the court below in cases from which appeal or error has been brought; of regulating the putting in or renewal of security; and of providing for all cases in which the law affords the party no special remedy.—Such court may also make such rules of practice as may be

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\* Whenever a record is required by law to be transmitted from one court to another, and to a different place, such transmission may be effected through the post-office, and the party requiring such transmission is bound to disburse the postage; and any delay caused by the neglect of such party to pay such postage, is deemed to be occasioned by his fault.—With the consent of the parties the record may be transmitted by any other means.—C. S. L. C., c. 82, s. 6.

necessary, for governing the proceedings in all cases brought before it, provided such rules be not contrary to any existing law.—It may also make and establish tariffs of fees for the counsel, advocates and attorneys practising before it, and also for its bailiffs.

#### CHAPTER FOURTH.

##### OF APPEALS TO HER MAJESTY.

**1178.** An appeal lies to her majesty in her privy council from final judgments rendered in appeal or error by the court of queen's bench :

1. In all cases where the matter in dispute relates to any fee of office, duty, rents, revenue, or any sum of money payable to her majesty ;

2. In cases concerning titles to lands or tenements, annual rents and other matters by which the rights in future of parties may be affected ;

3. In all other cases wherein the matter in dispute exceeds the sum or value of five hundred pounds sterling.—C. S. L. C., c. 77, s. 52.\*

\**Held*—An appeal lies from a judgment dismissing an attachment before judgment.

Dorion, C. J. An appeal to the privy council can be allowed only from a final judgment. But as a judgment dismissing an attachment before judgment cannot be remedied at any other stage of the case, the court holds that the judgment

**1179.** Nevertheless, the execution of a judgment of the court of queen's bench cannot be prevented or stayed, unless

was a final one, and the motion for leave to appeal to the privy council must therefore be granted. Dallimore and Brooke, Q. B., Montreal, 1874.

*Held*—That no appeal lies from a judgment upon demurrer.

Dorion, C.J. There is nothing in the judgment which cannot be remedied after final judgment ; the judgment is merely interlocutory and therefore the motion for leave to appeal to the privy council cannot be granted. Brooke and Bloomfield, Q. B., Montreal. 21st Sept., 1874.

*Held*—That where it is necessary to add interest and costs to the amount of the principal demand, to make up £500 sterling, appeal to her majesty will not be allowed. Stanton and the Aetna Insurance Co., 21st Dec., 1872, Montreal.

*Held*—That where the principal demanded is less than £500 sterling, leave to appeal to her majesty will be refused, even though addition of accrued interest amounts to more than that sum. Commercial Union Assurance Co., and Canada Iron Manufacturing Co., Montreal, 22nd Sept., 1873.

£500 = \$2431.66.

Prin. of orig.

judgment...\$2150 00

Int. from 16 } 301 00

Feb., '71, as }

p. judgment } ————2451 00

the party aggrieved gives good and sufficient sureties, within the delay fixed by the court, that he will effectually prosecute the appeal, satisfy the condemnation, and pay such costs and damages as may be awarded by her majesty, in the event of the judgment being confirmed. The security may be received before one of the judges of the court of queen's bench.—*Ibid.* s. 52.

*The sureties justify their solvency upon the real estate which is described in the bail-bond. One surety suffices, if he is the owner of real estate which he describes, provided that the value of such real estate is equal to the amount of the security, over and above all charges and hypothecs. The judge who receives such security may order, either on demand or otherwise, the production of the registrar's certificate, the valuation rolls, and any other documents for the purposes of the security, and is bound to put such questions as he deems advisable to the sureties, and such questions and the answers thereto may be taken down in writing. Nevertheless the party appellant may exempt himself from furnishing such security, by depositing an amount equal to that required for the security, either in money, in bonds of the Dominion or of the Province of Quebec, or in corporation debentures, and such moneys, bonds or debentures are deposited either with the clerk of the court of queen's bench, or with the sheriff as the judge may direct.—34 Vic., (1870) c. 4, s. 14, Q.*

**1180.** The appellant may also consent to the judgment being executed, and in such case may give security only for the costs in appeal, under the same conditions as under article 1124.—*Ibid.* s. 52.

**1181.** The execution of any judgment of the court of queen's bench cannot be prevented or stayed after six months from the day on which the appeal was allowed, unless the appellant files in the office of the clerk of appeals, a certificate, signed by the clerk of her majesty's privy council, or any other competent officer, and stating that the appeal has been lodged within such delay, and that proceedings have been had therein.\*—*Ibid.* s. 53.

**1182.** The clerk of appeals of the court of queen's bench is bound to register any exemplification of a decree of her majesty in her privy council, as soon as it is presented to him for that purpose, without requiring any order of the court of queen's bench to that effect, and to send back the record in the case to the court below, together with a copy of such exemplification which has been registered as above mentioned.—*Ibid.* s. 54.

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\* Execution cannot be had if the record has been transmitted within the six months, even if certificate be not filed within that delay.—*Jones vs. Guyon* 17 L. C. Rep. 377.

# BOOK FIFTH.

## INFERIOR JURISDICTIONS.

### CHAPTER FIRST.

#### COMMISSIONERS' COURT FOR THE SUMMARY TRIAL OF SMALL CAUSES.

**1183.** The commissioners cannot sit and hold their court separately and at the same time in the same locality. The court may be held by one commissioner, and several or all of the commissioners may likewise sit together.—They must decide according to equity and good conscience, and to the best of their ability and judgment.—C. S. L. C., c. 94, ss. 4, 7, 11.\*

\* An Act to amend the act respecting commissioners' courts for the summary trial of small causes

1. Chapter 94 of the consolidated statutes for Lower Canada, is hereby amended, by adding, after section 49, the following sections:

"49a. The commissioners' court which has been, or which may hereafter be established in any parish or township, shall continue to be the commissioners' court of such parish or

**1184.** The commissioners have, for keeping order during their sittings, and for enforcing the execution of their warrants, orders and judgments, the

township and shall continue to have jurisdiction over the whole extent of the territory comprised within the limits of such parish or township at the time of the establishment of such court; and this notwithstanding that incorporated villages have been or may hereafter be formed out of a portion of such territory. But the lieutenant-governor in council may, at any time, upon petition to that effect, establish a commissioners' court in and for any such village, in which case the court of such parish or township shall continue to have jurisdiction only over the remainder of the territory and may continue to hold its sittings within the limits of such village."

"49b. Whenever any parish or township, in which a commissioners' court has been or may be established, is divided into two or more parishes or townships, or whenever any portion of the

same powers as the other courts of Lower Canada.—*Ibid.* ss. 9, 44.

**1185.** They may be recused for the same reasons as judges of other courts.

**1186.** The recusation must be in writing.—*Ibid.* s. 12.

**1187.** If all the commissioners are recused by either of the parties, the case is immediately transmitted to the nearest commissioners' court, which decides upon the validity of the recusation, and afterwards hears and determines the merits of the case, in the event only of the recusation being maintained.—But if the recusation is overruled, the case is sent back to the former court, which may, without reference to the merits, tax the cost of such recusation against the party who made it.—*Ibid.* s. 12.

**1188.** The commissioners' court exercises an ultimate

territory of such parish or township is detached therefrom, the lieutenant-governor in council may, upon petition to that effect, determine the jurisdiction thereafter to be given to such court and the name by which it shall thereafter be known."

"49c. None of the provisions hereinbefore contained shall be construed to affect, or shall in any manner affect any cause, trial, or proceeding now pending before any commissioners' court to which this act is intended to apply."—41 Vic., (1878) c. 17, Q.

jurisdiction in all suits purely personal or relating to movable property, which arise from contracts or quasi-contracts, and wherein the sum or value demanded does not exceed twenty-five dollars, and defendant resides:

1. In the locality of the court;

2. In another locality, but in the same district and within a distance of five leagues, if the debt has been contracted in the locality for which the court is established;

3. In a neighboring locality in which there are no commissioners, or in which the commissioners cannot sit by reason of illness, absence, or other inability to act, provided such locality is in the same district within a distance not exceeding ten leagues.—1 Boitard, p. 93-4.—Pot. *Int. gen.*, Nos. 110, 111, 119.—C. S. L. C., c. 94, ss. 7, 19, 20.

**1189.** It has no jurisdiction in suits for slander, or for assault and battery, or relating to civil status, paternity, or seduction, or lying-in expenses; nor in suits for the recovery of any fine or penalty whatever.—*Ibid.* s. 8.

**1190.** It has jurisdiction in suits for the recovery of assessments, not exceeding twenty-five dollars, imposed for the building of churches, parsonages and church-yards.—C. S. L. C., c. 18, s. 25.

**1191.** It may in matters within its jurisdiction, grant:—attachments for rent;—attachments in revendication;—attachments by garnishment

after judgment;—simple attachments or attachments by garnishment before judgment, for sums exceeding five dollars, whenever it is established by the affidavit of the plaintiff, or of his agent, that the defendant is secreting or is about to secrete his property or absconds or is immediately about to leave the province, with intent to defraud his creditors.—C. S. L. C., c. 94, ss. 23-4.

**1192.** [These proceedings may be executed beyond the limits of the judicial district in which they are issued, provided an order of one of the commissioners, authorizing such execution within the district where it requires to be executed, is endorsed upon the warrant.]—Every warrant of simple attachment in revendication, attachment for rent, attachment by garnishment or seizure by garnishment, must be made returnable on a day named, within forty days, and the return with a certificate of the proceedings must be made on the day so named.—Such affidavit may be received either by one of the commissioners or by the clerk of the court.—*Ibid.* s. 25.

**1192 a.** *In the case of attachment by garnishment before or after judgment, the garnishee within three days after the writ of seizure has been served upon him, may make his declaration under oath before the clerk of the circuit court, nearest to the place where the writ was served upon him.*

**1192 b.** *Such clerk is authorized to administer the oath*

*required, and must after having drawn up, and received the declaration of the garnishee, forward the same, without delay through the post by a registered and stamped letter, to the clerk of the commissioners' court, where the cause is pending.*

*He is entitled to a fee of one dollar, payable by the garnishee, for drawing up, receiving and forwarding the declaration as required; and on the payment of such fee, he prepares a receipt which he forwards, with the declaration of the garnishee."*

**1192 c.** *Such sum of one dollar is taxed by the commissioners or by their clerk as an integral part of the costs of suit; and the receipt given therefor and forwarded to the clerk of the commissioners' court, is equivalent to a judgment of such court in favor of the garnishee against the plaintiff in the suit and may be executed by seizure, after the same delay, and in the same manner as any other judgment of such court."*  
—37 Vic., (1873-4) c. 11, Q.

**1193.** Any minor above the age of fourteen years may bring a suit before a commissioners' court for the recovery of wages or salary, in the same manner as if he was of age.—*Ibid.* s. 21.

**1194.** The delay upon ordinary summons must be at least three clear days when defendant does not reside more than two leagues from the place to which he is summoned, with the usual addition of delay, when the distance exceeds two leagues, according to article 75.—But if the summons is ac-



accompanied with an attachment, the delay must be at least fifteen days and not more than forty days.—*Ibid.* ss. 22, 27.

**1195.** The writ of summons commands the defendant to pay the plaintiff the amount demanded or to appear before the court to answer such demand.—It must also contain: The names, surname, residence and occupation, both of the plaintiff and of the defendant;—a summary statement of the cause of the action;—the day on which the defendant must appear;—the date of the writ;—the signature of the commissioner.—7 Vic., c. 19, schedule No. 1.

**1196.** Ordinary writs of summons may be served by any bailiff of the superior court or by any sergeant of militia residing in the locality.—C. S. L. C., c. 94, s. 28.

**1197.** If the summons is accompanied with an attachment it can only be served by a bailiff.—*Ibid.* § 2.

**1198.** Either party may evoke the case to the [circuit] court in the district when the contestation relates:—to any title to immovable property;—to any fee of office, or to any sum of money due to the crown;—to any duty, rents, revenue, or annual rent, payment or other matter by which rights in future might be bound.—C. S. L. C., c. 83, s. 178; c. 94, s. 29.

**1199.** The improbation of any act or document produced before the court has the effect of an evocation [to the circuit court.].—C. S. L. C., c. 94, s. 30.

**1200.** In the cases of the two preceding articles, the commissioner, or one of the commissioners, or the clerk, must, within fifteen days, transmit the record to the circuit court together with a certified transcript of the entries in the register concerning the same.—Nevertheless, in the case of improbation, the record cannot be transmitted, unless the party alleging the falsity gives sufficient security for the costs to be incurred upon such improbation.—*Ibid.* s. 31.

**1201.** [In default of such security being given within the delay fixed by the court the party forfeits his right of evocation, and the commissioners' court may proceed to hear and determine the case without regard to the improbation.]

**1202.** If the evocation is allowed, the case is heard and determined by the court to which it is evoked as if it had originated therein.—*Ibid.* s. 32.

**1203.** No person can act as attorney of either of the parties before a commissioners' court, except he is an advocate or attorney at law, or the holder of a special power of attorney, or unless it is in the presence and with the consent of the party.—Bailiffs and sergeants of militia can in no case act as attorneys.—*Ibid.* s. 18, § 1.

**1204.** Any person, other than an advocate or attorney at law, who acts for one of the parties must do so gratuitously; and if such person for so acting receives, either directly or indirectly, any fee, emolument or remuneration what-

over, he is deemed to have received the same under false pretences and may be punished accordingly, and is, moreover, disqualified from ever acting as attorney before a commissioners' court.—*Ibid.* s. 18, § 2.

**1205.** No clerk of such court can act as the attorney of either of the parties.—*Ibid.* s. 18, § 3.

**1206.** If the defendant has been served personally and makes default, or if he confesses judgment, or if the parties agree to it, the case may be heard on the day of the return and judgment may be rendered.—In any other case the suit must be postponed to a subsequent day for trial.—*Ibid.* s. 32 §§ 1, 2.

**1207.** By consent of the parties the case may be referred to the decision of three arbitrators, one of whom is named by each party and the third by the court.—The court may also, in its discretion, order such reference.—The arbitrators, before acting, must be sworn before one of the commissioners or before a justice of the peace, to fulfil their duty faithfully and impartially.—They may hear the parties and their witnesses, who must be sworn before a commissioner or before a justice of the peace.—The decision of two of the arbitrators is final, and must be homologated and executed accordingly.—*Ibid.* s. 84.

**1208.** The cases are heard, tried and determined in a summary manner, without any written pleadings being necessary.—*Ibid.* s. 7.

**1209.** Oral testimony is admitted in all cases, and one witness, even if related, is sufficient.—But the bailiff or sergeant who served the writ of summons cannot be witness for the party who employed him, except as regards the service itself.—C. S. L. C., c. 94 s. 18 § 3; s. 36;—c. 82, ss. 14, 15, 16.

**1210.** Upon the application of either of the parties, the court may compel any person residing within its jurisdiction to attend as a witness in any case, under a penalty of not less than one dollar, nor more than four dollars, for every default to attend as commanded.—C. S. L. C., c. 94, s. 35.

**1211.** The court, in rendering judgment, may condemn the unsuccessful party to the costs of suit, of contestation, and of arbitration.—But if the amount of the judgment does not exceed two dollars, the court may reduce the costs to the same amount as that for which judgment is rendered.\*—*Ibid.* s. 38.

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\* The court may grant stay of execution, and may order that the amount of the judgment be paid in two or three instalments, at intervals of not more than one month each; but if one of the instalments is not paid at the time appointed, execution may at once issue for whatever remains due. When any poor defendant, before judgment, offers sufficient security, to the satisfaction of

**1212.** If the debtor fails to satisfy the amount of the condemnation against him within eight days, he may be compelled to do so by the seizure and sale of such seizable movables as he may have within the district in which the court was held.—He is liable to the costs of such execution to the amount of one dollar and a half.—If the sale does not take place he is not bound to pay more than seventy-five cents of costs.—These costs do not in any case comprise the expense of feeding cattle, if any have been seized.—The warrant of execution must be made returnable and be returned like the other warrants mentioned in article 1192.—*Ibid.* ss. 41-2.

**1213.** No opposition to the sale of movables under seizure can stay proceedings, unless it is allowed by a commissioner and accompanied with an order to that effect.—*Ibid.* s. 43.

**1214.** Oppositions thus allowed are heard and determined in the same manner as other cases before the court.—*Ibid.* s. 43.

**1215.** The clerk, and the

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the court, for the amount of the debt and costs, the court may order that the amount of the judgment be paid by weekly instalments, the last of which shall not be more than six months after the date of the judgment.—C. S. L. C., c. 94, s. 37, § § 1, 2.

(The codifying commissioners suggested the omission of *this* provision.)

bailiffs or sergeants of militia cannot demand any other emoluments than those mentioned in form number 56 in the appendix to this code.—*Ibid.* s. 40.

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## CHAPTER SECOND.

### OF JUSTICES OF THE PEACE AND OTHER INFERIOR CIVIL JURISDICTIONS.

**1216.** Justices of the peace have also jurisdiction in certain civil matters, such as the recovery of school taxes, of assessments for the building or repairing of churches, parsonages or church-yards, damages caused by animals, and other matters relating to agriculture, disputes between masters and servants in the country parts, seamen's wages, claims of pawners against pawnbrokers, and other matters.

**1217.** In certain cities the recorder's court has also jurisdiction for the recovery of certain municipal claims, and in matters of dispute between lessors and lessees, and master and servant.

**1218.** The Trinity House also exercises a civil jurisdiction in matters connected with the shores of the river St. Lawrence and of the rivers flowing into it, and also with regard to the wages and indemnities due to pilots.

**1219.** The extent of the jurisdiction of these special courts and the manner of proceeding before them are regu-

lated by the statutes which create them or relate to them, and in certain respects by the practice therein followed.

### CHAPTER THIRD.

#### REMEDIES AGAINST THE PROCEEDINGS AND JUDGMENTS OF THE ABOVE MENTIONED COURTS.

**1220.** In all cases where no appeal is given from the inferior courts above mentioned, the case may be evoked before judgment, or the judgment may be revised, by means of a writ of *certiorari*, unless this remedy is also taken away by law.—1 Wharton, Law Lexicon, 144.

**1221.** The remedy lies nevertheless, only in the following cases.

1. When there is want or excess of jurisdiction:

2. When the regulations upon which a complaint is brought, or the judgment rendered are null or of no effect;

2. When the proceedings contain gross irregularities and there is reason to believe that justice has not been or will not be done.—*Ibid.*

**1222.** The writ of *certiorari* can only be granted upon motion, supported by an affidavit of the facts and circumstances of the case.

**1223.** A previous notice of time and place at which the motion will be presented must be served upon the functionary seized of the case, or who rendered the judgment, and a

return of such service is made as in any other case.—C. S. L. C., c. 89, s. 2, § 2.

**1224.** The service of such notice has the effect of suspending all proceedings in the court below.

**1225.** The motion must be presented to the superior court or the circuit court [or to a judge.] The opposite party is entitled to appear and make any oral objections of a nature to prevent the granting of the writ of *certiorari*.

**1226.** Writs of *certiorari* are in the name of the sovereign; they are sealed with the seal of the court, and clothed with the other formalities required for other writs, and command the functionary to whom they are addressed to certify and transmit, within a fixed delay, all the papers connected with the case, by whatever names the parties may be therein designated.—2. Tidd's Prac. 147.

**1227.** Mention must be made on the back of the writ that it has issued by order of the court.

**1228.** The writ is served upon and left with the functionary to whom it is addressed, and if it is addressed to a court composed of several functionaries, it is left with one of them and such service suspends all proceedings before them under pain of being liable for contempt of court.—2 Comyn's Dig. 340.—The return of such service is made upon a certified copy of the writ.

**1229.** The persons to whom

the writ is addressed are bound to comply with it, by annexing to it all the papers demanded and certifying their return on the back of the writ.

**1230.** If they fail to comply with the writ they are liable to coercive imprisonment, in the ordinary manner.

**1231.** If the opposite party has not already appeared and filed an appearance in the ordinary form, he may do so immediately after the writ is regularly returned; and thereupon the case may be inscribed on the roll by either party, to be heard in the ordinary manner.—C. S. L. C., c. 89, s. 3.

**1232.** All interlocutory or final judgments upon writs of *certiorari* are drawn up and

served in the same manner as in ordinary suits.—*Ibid.* s. 2.

**1233.** The court, in rendering judgment upon the writ, may award costs in its discretion.—*Ibid.* s. 4.

**1234.** No appeal lies from the judgment on the application for the writ, or from the judgment upon the writ itself; nor are such judgments subject to review.—*Ibid.* s. 6; c. 88, s. 17.

**1235.** The procedure regulated by this chapter applies also to all other cases in which the writ of *certiorari* will lie, and against any other court not mentioned in this book; but it does not apply with respect to the court of vice-admiralty, over which the superior court, as well as the circuit court, has no control.

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## PART THIRD.

### NON-CONTENTIOUS PROCEEDINGS.

#### TITLE FIRST.

#### OF REGISTERS AND THEIR AUTHENTICATION.

##### CHAPTER FIRST.

##### OF REGISTERS OF CIVIL STATUS.

**1236.** All registers intended to record births, marriages and deaths, or religious profession, must, before being used, be numbered upon the first and every subsequent leaf, with the number of such leaf written in words, at full length, and be sealed with the seal of the superior court, *or the seal of the circuit court*,\* by affixing the same upon the two extremities of a ribbon, or other such fastening, passing through all the leaves of such registers and secured inside of the cover thereof; and upon the first leaf must be written an attestation under the signature of a judge or the notary of the superior court of the district, or of the clerk of the circuit court of the

county which comprises the roman catholic parish, protestant church, or religious congregation or society authorized to keep such registers,\* and for which they are to serve, and to which they belong, specifying the number of leaves contained in the register, the purpose for which it is intended, and the date of such attestation.—Such certificate cannot, however, be given until the formalities prescribed by special acts with regard to certain religious congregations have been fulfilled.†

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\* As to registers kept by roman catholic priests, v. 36 Vic., (1872) c. 16, Q.

† 1. The duplicate registers for acts of civil status may be divided into three volumes, one for acts of birth, one for acts of marriage, and the third for acts of burial; or into two volumes, one for acts of birth

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\* 32 Vic., c. 26, s. 1, Q.

—C.S.L.C., c. 20, s. 2.—25 Vic., c. 16, s. 1.—C.C. Actes de l'état civil, art. 3.

**1237.** The duplicate register which is to remain in the hands of the priest, minister, or person doing the parochial or clerical duty of each roman catholic parish church, protest-

and of marriage, and the other for acts of burial.

Such volumes of the duplicate registers may be either blank, or may be prepared with printed forms, running consecutively through each volume; but when one volume is used for acts of birth and of marriage, the first part shall contain, in such consecutive order, the forms for acts of birth, and the last part, in the same consecutive order, the forms for acts of marriage.

2. Whenever, in accordance with the provisions of chapter 76 of the consolidated statutes of Canada and the acts amending the same, a body shall have been delivered, before burial, to a school of medicine or to a university, an act of death shall be inscribed, by the person charged with such duty, in the duplicate registers for acts of civil status; and such act of death shall have the same effect as an act of burial and shall take the place thereof.

3. The inspector of anatomy shall be bound, within a delay of three days, to appear before the rector, curate, or other priest or minister of a church of the religion to which the deceased belonged, and to

ant, or religious congregation, must be bound in a substantial and durable manner.—C. S. L. C., c. 20, s. 1 § 3.—[A copy of the title "Of Acts of Civil Status," in the Civil Code, and of the first, second and third chapters of the title "Of Marriage" in the same code, *as well as a copy*

cause such act of death to be inscribed. It shall contain the day of the death, the names, surname, and quality or occupation of the deceased, and mention of the place where the body was found, or of the institution where the death occurred, and of the school of medicine or university to which the body has been delivered; and it is signed by the inspector of anatomy and by the person inscribing the act.

4. Whenever the duplicate registers are divided into volumes and are in printed forms, a sufficient number of blank pages shall be placed at the end of the volume for the acts of death mentioned in the two last sections.

5. Every omission by the inspector of anatomy to cause an act of death to be inscribed, shall be punishable by a penalty not exceeding eighty dollars, nor less than eight dollars.

6. An alphabetical index shall be made at the end of each duplicate of the registers of civil status for each church, congregation or other religious community, by the person entitled by law to keep such registers.—41 Vic., (1878) c. 8, Q.

of 32 Vic., c. 26,\* must be attached to such duplicate.

**1238.** *Curés*, churchwardens of *fabriques*, and other such administrators, in places where baptisms, marriages and deaths have taken place, and also the superior of communities in which vows of religious profession have been made, are respectively bound to fulfil the requirements of the laws with regard to the registers of acts of civil status, and may be compelled to do so by such means and under such pains, penalties or damages as the law allows.

**1239.** Any person who desires to have any register rectified must present to the court a petition for that purpose, stating the error or omission of which he complains, and praying that the register may be rectified accordingly. —The petition must be served upon the depositary of such register. —C. P. C., 855.

**1240** The court may also order any person to be called in whom it deems interested in the application. —Such person is thereupon summoned in the ordinary manner. —C. P. C., 856.

**1241.** Any judgment ordering a rectification must contain an order for the inscription of such judgment upon the two registers, and no copy of the act rectified can thereafter be delivered without the corrections thus ordered to be made. —C. P. C., 857.

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\* 32 Vic., (1869) c. 26, s. 6, Q.

## CHAPTER SECOND.

### REGISTERS OF REGISTRY OFFICES.

**1242.** Every register of which the law requires the authentication, must, before any entry is made therein, be authenticated by an attestation, written on the first page and signed by the prothonotary of the superior court of the district in which the register is to be used; and such attestation must mention the purpose for which such register is intended, the number of leaves contained therein, and the date of the attestation. Each leaf must be numbered in words, written at full length, and the prothonotary must write thereon the initial letters of his name. —C. S. L. C., c. 37, s. 59.

## CHAPTER THIRD.

### REGISTERS OF SHERIFFS AND CORONERS.

**1243.** The sheriff and the coroner of each district must keep a duplicate register for transcribing and registering therein all deeds or acts of sale made by them of real property in their official capacity, and when such register is filled one of the duplicates thereof must be deposited by such sheriff or coroner in the office of the prothonotary of the superior court for the district. —C. S. L. C., c. 92, s. 11.

**1244.** Such registers must be authenticated in the same manner as those of the registry offices mentioned in article 1242. —*Ibid.* § 2.



## TITLE SECOND.

## OF INSPECTION OF DOCUMENTS.

**1245.** Notaries are bound, upon payment of their lawful fees and dues, and without any judge's order, to give communication or copies of or extracts from any act or document forming part of their official records, to the parties or to their heirs or legal representatives.—1 Couchot, 84.—3 Brillon, 506.—Ord. 135, art. 12.—1 Pig. 54.—C. P. C., 839.—*Sed vide* Bioche, t. 4., p. 398, no. 55.

**1246.** They are not bound to give such communication, copies or extracts to other parties without an order from a judge, [unless it is of such nature that it should be registered.]—Couchot, *ead. loc.*—1 Pig., 49.

**1247.** If the notary refuses to give such communication, copies or extracts, as required, the person demanding the same may, by petition duly served upon such notary, apply to a judge for an order for inspection, which is granted upon proof of his right or his interest.—1 Pig. 49, 54.—1 Lacombe, 128.—C. P. C., 839, 841.

**1248.** If communication only be demanded, the order fixes the day and hour when communication of the act must be given.—If a copy or extract be demanded, the order fixes the time at which it must be furnished.—1 Pig. 51.

**1249.** The service of the order of the judge upon the notary must give a sufficient delay for a compliance with such order.—*Ibid.*

**1250.** The copy or extract must be certified to have been delivered in compliance with the order; and the notary mentions the fact at the foot of the copy of the order that was left with him.—*Ibid.* 47, 52, 53.—C. P. C., 842.

**1251.** If the notary fails to comply with the order of the judge, he is liable for all consequent damages, and to coercive imprisonment.—*Ibid.* 45.

**1252.** When the original of any authentic act or a public register has been lost, destroyed or carried away, and any authentic copy or extract thereof exists, the holder of such copy or extract may apply to the court or judge for leave to deposit the same with such public officer as the court or judge will name, to be there used and considered as an original, the copies of which will be deemed authentic.—*Ibid.* 54.

**1253.** [A similar application may be made by any party to a deed, in order to oblige any other party to the same, who is in possession of an authentic copy thereof, to deposit such copy for the same purpose, and

such other party is bound to comply with the order of the court or judge in that behalf, under pain of all damages. The whole nevertheless at the cost and expenses of the party requiring such deposit, who is obliged to furnish him with a copy of the deed and to indemnify him for all travelling and other expenses.]

**1254.** The petition must be served upon all other interested parties mentioned in the act.

**1255.** Upon satisfactory

proof, the court or judge orders the document produced to be deposited in the prothonotary's or notary's office, or other public office in which the original was; or if it is a notarial act, forming part of the records of a notary who is dead or has ceased to practise, then in the prothonotary's office in which the records of such notary are deposited; and every regular copy of the document thus deposited avails for proof in the same manner as if such document was the original.

## TITLE THIRD.

### OF FAMILY COUNCILS.

**1256.** Whenever application is made to provide minors, interdicted persons, absentees or substitutes, with tutors, or tutors *ad hoc*, or curators, or to authorize such tutors or curators to do some particular act, or for leave to alienate immovables belonging to persons who have not the free exercise of their rights, or for the emancipation of minors, the judge or the court cannot act without previously taken the advice of a family council.—2 Pig. 6.

**2157.** Family councils are convened and composed in the manner provided in the ninth title of the first book of the Civil Code.

**1258.** Any person demanding the convocation of a family council must show that he has used due diligence to summon the nearest relatives residing in the district, and the delay for such notice is one intermediate day, when they reside at a distance less than five leagues from the place where the family council is to meet, with the usual additional delay when the distance exceeds five leagues, according to article 75.—2 Pig. 302.

**1259.** The relations and friends must be sworn before giving their advice upon the matters submitted to them.—*Ibid.* 301.—C. S. L. C., c. 48, s. 1, § 3.

**1260.** The minutes of the advice given by the relations and friends must be signed by them, or must mention the reasons which prevent them from signing.

**1261.** The superior court and the circuit court, and any judge of the superior court at any place where sittings of either of the said courts are held, and either in or out of term, have like jurisdiction in, and may decide all matters in which the advice of a family

council is required, and the proceedings in such cases must remain among the records of the court in which the application was made.\*—C. S. L. C., c. 78, ss. 3, 23.

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\* Any judge of the superior court has the jurisdiction and power mentioned in this article, at any place where the circuit court is held, and either in or out of term.—35 Vic., (1871) c. 6, s. 32 Q.

## TITLE FOURTH.

### OF TUTORSHIPS AND CURATORSHIPS.

**1262.** The proceedings to be taken for the appointment of tutors to minors, and of curators to interdicted persons, emancipated minors and absentees, are explained in the different titles of the Civil Code which treat of such matters respectively.—C. C. liv. 1, tit. 9, arts. 4, 21, 74, 75; tit. 10, arts. 4 to 10, 13c. to 17; tit. 11, arts. 24, 25, 25a.

**1263.** The proceedings to be taken for the appointment of curators to successions that are vacant or accepted under benefit of inventory, or to property judicially abandoned by insolvent debtors, are regulated under the respective titles in this code concerning such matters.

**1264.** The proceedings for the appointment of curators to the property of corporations that have been dissolved, or declared illegal, are regulated in the Civil Code, under the title *Of Corporations*, and in the eighth chapter of the second book of the second part of this code.

**1265.** The proceedings for the appointment of curators to substitutions are the same as those for the appointment of tutors to minors.—2 Pig. 213.

**1266.** Every curator is bound, before acting as such, to make oath that he will well and truly perform the duties devolving upon him.—*Ibid.* 510.

## TITLE FIFTH.

OF THE SALE OF IMMOVABLES BELONGING TO MINORS  
OR OTHER DISQUALIFIED PERSONS.

**1267.** No voluntary alienation of immovable property, or of shares or stock in manufacturing or financial associations, belonging to minors or interdicted persons can be made without the order and permission of the court or of a judge.—C. C. Tutorships and Minority, 56, 57.

**1268.** In addition to the formalities prescribed by the Civil Code, such alienation cannot take place unless, before taking the advice of a family council, the immovable has been inspected by two experts, one of whom was named by the tutor and the other by the subrogate-tutor; and such experts must not be related either to the parties or to the persons acting for them.—C. S. L. C., c. 48, s. 1.

**1269.** The nomination of experts may be made under the sanction of the judge or of the notary before whom the application is made to have a family council convened.\*—*id.*

\* Form No. 52.

In the — day of — in the year one thousand eight hundred and — at — o'clock — noon, before the undersigned public notaries for

**1270.** The experts, after being sworn before the judge, prothonotary, clerk or notary, must ascertain the condition and value of each immovable, and the truth of the other cir-

Lower Canada, residing in the district of — came and appeared A, residing — of the one part, and B, residing — of the other part, who have appointed that is to say, the said A — the person of — and the said B — that of — as experts for the purpose of proceeding to the inspection of the real estate belonging to — described in the declaration made by the said — by act before —, notary, (or one of the undersigned notaries) to ascertain the value thereof, (and if the sale is demanded on account of indivisibility) and whether or not it can advantageously be divided.

Form No. 53.

On the — day of — in the year one thousand eight hundred and — at — o'clock in the — noon, before me, the undersigned notary public for Lower Canada, residing in the district —, came and appeared —, who affirms that in conformity with the

cumstances on account of which the sale is demanded, and make their report by a notarial act, delivered in original form.\*—*Ibid.* § 2.

declaration made by act before —, notary, bearing date the —, for the purpose of obtaining authority to sell, for the reasons therein set forth, the real estate belonging to —, therein designated and described as follows, to wit: (*here describe the real estate*) he did for the said purpose cause to be summoned before us to wit: — in default of relations, — requiring us, they being present, to receive their advice as to the contents of the act of declaration aforesaid, and the parties above named having appeared, we have caused to be read the said act of declaration, the report of the experts made before —, notary, and his colleague, and have taken and received from them the necessary oath, and such oath having been made, they have all unanimously declared that they are of opinion that —, (*Should there be a division of opinion, mention the same, and give the reasons therefor.*)

\* Form No. 54.

I, — and I, —, do make oath and swear that I will faithfully proceed to the performance of what is required of me by the act of my appointment, executed before — notary, on the — and that I will make a true report

1271. If the experts cannot agree each must report his respective opinion, giving the reasons upon which such opinion is based.

of my opinion on the whole matter, without favor or partiality for any of the parties interested in the matter in question. So help me God.

Sworn before me the undersigned notary.

Form No. 55.

On the — day of — in the year one thousand eight hundred and — at — o'clock in the — noon, before me the undersigned public notary for Lower Canada, residing in the district of — came and appeared — the experts appointed by the act above executed by the undersigned notaries, on — who declare that having previously made oath as appears by the certificate hereunto annexed, they proceeded on the — day of — to the inspection of the real estate, appurtenances and dependencies mentioned and described in the declaration of — received by —, notary, the —, and after due examination and obtaining every information necessary for the purposes mentioned in their said act of appointment, they value and estimate the said real estate — (*if there be several immovables, they should be valued separately,*) and further, (*if the sale is made on account of indivisibility*) they

**1272.** The report is submitted to the family council, together with the application to be authorized.\*—*Ibid.* s. 1 § 3; s. 2.

**1273.** [If the matter relates to the investment of moneys, or to shares or stock in manufacturing or financial associa-

declare that it cannot advantageously be divided.

The said experts further declare that they are not related to the parties interested in the matter in question, nor to their legal representatives.

Whereof act in original form is delivered at—.

\* Form No. 56.

Lower Canada, }  
District of—.

To the honorable the judge (or judges) of the superior court, at &c., &c.

A. (*addition and place of residence*) humbly represents that he has caused the relations and friends of — to be consulted by —, notary, at — on the — day of —, and has caused to be fulfilled all proceedings by law required to be had in order to — and submitted for your approval. And he therefore prays that your honors will take these proceedings into consideration and homologate them, if they ought to be so homologated, and you will do justice.

At — the — one thousand eight hundred.—

tions, the value thereof must be ascertained.]

**1274.** The judge, if he authorizes the sale, must fix an upset price for each immovable, share or stock, and, independently of the other conditions imposed upon the sale, such upset price cannot be less than the value ascertained by the experts.—2 Fig. 106.

**1275.** If the judge refuses to authorize the sale, the reasons for such refusal must be given in writing, and form part of the record.

**1276.** The place and time of the sale must be published on three consecutive Sundays, at the door of the parish church of the place where the immovables are situated; or, if there is no church, at the most public place in the locality; and notice thereof must be posted up immediately after the first publication, and such notice must contain a description of the immovables.—2 Fig. 106-7-8.

**1277.** [If no higher price is offered than the upset price, the person applying for the sale may proceed to effect a private sale; but he can only do so within the four months which follow the authorization, and for a sum not less than the upset price.]

**1278.** In the case of a voluntary licitation of an immovable, held undividedly between a tutor and his pupil, and which cannot be advantageously divided, proceedings are had in the manner above mentioned, and no purchase of it by the tutor is valid unless

the minor is represented at the sale by a tutor *ad hoc*.

PROVISIONS AS TO CASES WHERE  
VALUE OF PROPERTY IS UNDER  
FOUR HUNDRED DOLLARS.

Whereas the formalities prescribed for the judicial sale of immovable property belonging to minors, and others incapable of acting for themselves, have been established solely for the protection of the latter; and whereas in the case of the sale of immovables of small value, the price thereof is frequently absorbed, to the detriment of minors and their creditors, by the observance of the formalities required for the sale of such immovables. Therefore, Her Majesty by and with the advice and consent of the Legislature of Quebec, enacts as follows:

Articles 298 and 299 of the civil code and the fifth title of the third part of the code of civil procedure shall not apply to the sale of immovable property, the real value of which does not exceed the sum of four hundred dollars.\* The sale of such immovables may take place in the manner set forth in the following section.

2. Whenever the real value of the totality of the immovable or immovables, belonging to minors or others incapable of acting for themselves, does not exceed the sum of four hundred dollars, a judge of the superior court

may, upon petition presented to him to that effect, by the tutor and subrogate tutor of such minors, or by the curator of such persons as are incapable of acting for themselves, after making summary inquiry as to the value of the said immovables, order the sale thereof by public auction, at the prices and upon the conditions which he may deem just and reasonable to fix, in the interest of such minors or persons incapable of acting for themselves.

3. The judge shall have power to issue under his hand, an order to compel the appearance before him, without costs, of any person whom he shall deem qualified to afford him the information necessary to determine the value of the said immovables, and any such person, refusing to comply with such order, shall be guilty of a contempt of court.

4. Notice of the place, day and hour of such sale shall be given twice in fifteen days, in the "Quebec Official Gazette," and in two newspapers indicated by the judge, one of which shall be published in the French and the other in the English language, in the district in which the immovables are situated, and, in the event of their being no newspapers published in such district, then such notice shall be given in the newspapers of the nearest district.

5. The judge may, when he shall deem it advisable, dispense the petitioners from the necessity of publishing the notices mentioned in the preceding section, and authorize them to proceed to the sale, by consent, of the

\* This act applies to stocks and all immovable rights.—36 Vic., cc. 17, 18, Q.

*and immovables, to any person judge.\*—35 Vic., (1871) c. 7, Q. fixing the price fixed by such*

## TITLE SIXTH.

### PROCEEDINGS RELATING TO SUCCESSIONS.

#### CHAPTER FIRST.

##### OF SEALS.

##### SECTION I.

##### *Of the Affixing of Seals.*

**1279.** Seals can be affixed to the property of a succession long only as an inventory thereof has not been made.—2 *geau*, 270-1.

**1280.** Whenever seals are required to be affixed a commissioner is named for that purpose by a judge of the superior court in the district, on the application of any party interested.—1 *Pig.* 439, 3; 2 *Pig.*, 271.—C.S.L.C., c. s. 23.—C.P.C., 907, 912.

**1281.** The affixing of seals may be demanded:

1. By all those who lay claim to the succession of the deceased, or to a community dissolved at the death of one of the contents;

2. By the creditors;

3. By the testamentary executor;

4. By the crown, when there are no heirs, or when the property is confiscated.—2 *Pig.*, s.

250 *et seq.*—1 *Couchot*, 134.—C. P. C., 909.

**1282.** The commissioner must draw up minutes of the proceedings, in which he must state:

1. The date;

2. A designation of the person requiring the seals, and the nature of his right;

3. The judicial order authorizing the affixing of seals;

4. The attendance of the persons concerned, and whatever they may state;

5. A description of the places, bureaux, chests or closets, over the openings of which the seals are affixed;

6. A summary description of all articles found in view and placed under seals;

7. The taking, at the close of the affixing of seals, of the oath of the parties residing on the premises, that nothing has been, either directly or indirectly, taken away by them or with their knowledge;

8. The names and designa-

\* This act shall be read and interpreted as applying to capital sums stocks, shares and all immovable rights.—36 *Vic.*, (1872) cc. 17, 18, Q.



tions of the persons in whose custody the things under seals have been placed, and with whom a copy of the minutes must be left;

9. The signing of the parties present, or their being called upon to sign and the reasons which prevented them from doing so.—2 Fig. 281-2.—C.P.C., 914.

**1283.** The seals are affixed upon each extremity of a band passing over the keyhole of the lock, if there be one; or, if not, upon the joint of the opening of the apartment or receptacle containing the effects, in such a manner that it cannot be opened without breaking the band or removing the seals.—2 Fig. 280-1-2.—C.P.C., 915.

**1284.** If, when seals are being affixed, a will made in authentic form by the deceased is found open, the commissioner enters a description of it in his minutes, and delivers it to the guardian; but if the will is not in authentic form, or if it is closed or sealed, the commissioner, after sealing it himself, must deposit it in the prothonotary's office, together with his minutes, in order that the probate may be effected at the instance of the persons interested.—2 Fig., 282-3-4.—C.P.C., 916.

**1285.** When the commissioner finds the doors fastened, or is refused admittance, he must report the fact to the judge, who may authorize him to employ a locksmith and such force as may be necessary.—

The commissioner may, in the meantime, place guards around the premises, in order to prevent fraudulent removals.—2 Fig. 284.

**1286.** If, after he has entered the house, the commissioner meets with a declaration of opposition, he must mention it in his minutes, in order that the matter may be referred to the judge; but he must place guards in the meantime to prevent fraudulent removals.—2 Fig. 284.—C.P.C., 921.

**1287.** The judge decides forthwith upon the opposition, either by countermanding or restricting the affixing of seals, or by ordering the proceedings to continue on.—2 Fig., 285.—C.S.L.C., c. 78, s. 23.—C.P.C., 921-2.

**1288.** Whenever a reference to the judge has taken place, whatever is done or ordered thereon is certified at the foot of the commissioner's minutes.—C.P.C., 922.

**1289.** If there are no movable effects, the commissioner must state so in his minutes.—C.P.C., 824.

**1290.** As soon as the commissioner has completed his minutes he is bound to deposit them in the prothonotary's office, to form part of the records thereof.

**1291.** No second affixing of seals can take place, unless the first has been impugned as null.—In affixing seals the second time the bands are placed across those of the first sealing.—2 Fig. 298.

## SECTION II.

*Of the Removal of Seals.*

**1292.** All applications for the removal of seals, when contested, and all oppositions made after the affixing of seals has been completed, are heard summarily, unless the pleadings are ordered to be in writing.—2 Pig., 299.

**1293.** If the affixing of seals is declared null, an order is given at the same time commanding the commissioner who affixed them, or some other person, to remove them without any inventory, and to make a return of such removal; and in default of this order being complied with, any bailiff holding a copy of the order may break them and make a return of his having done so.—2 Pig., 299, 319.—C. P. C., 940.

**1294.** If, however, seals have been affixed a second time, the complete removal cannot take place until both sealings have been adjudicated upon.

**1295.** If seals have been affixed before the burial of the deceased, they cannot be removed before the expiration of three days after such burial, except for urgent reasons, which must be stated in the order which authorizes the removal.—2 Pig., 315-6.—C. P. C., 928.

**1296.** The removal of seals from the whole or from a part of the property may, in all cases, be demanded by such persons as may demand to have them affixed, and also by any

person claiming to be owner of the effects placed under seal, according to their respective rights; and the right to prosecute such demand belongs to him who first made it.—2 Pig., 631-7-8.—C. P. C., 928.

**1297.** The removal of seals must be applied for by petition to the court or judge, in order that the inventory may be proceeded with, after notifying all persons interested. — 2 Pig., 317-8.—1 Couchot, 135.—C. P. C., 951.

**1298.** The court or judge, when authorizing the removal of seals, orders that an inventory of the effects shall forthwith be made, after summoning, by a bailiff's notice, or a notice in notarial form, the heirs of the deceased, the surviving consort, the testamentary executor, and the known legatees.—2 Pig., 299, 313-7, 326.—1 Couchot, 135.—C. P. C., 951.\*

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\* 1. Whenever any of the persons entitled to be present at the removal of seals or to take part in an inventory, reside outside of the province, they need not be summoned; but in such case a judicial procurator is named by a judge of the superior court, on application of the person demanding the removal of seals or the making of an inventory, to represent such persons; and such judicial procurator must be present or have been notified to be present.

2. Notwithstanding the nomination of a judicial procurator

**1299.** If any of the persons mentioned in the preceding article have not the full exercise of their rights, they must

to represent the persons mentioned in the preceding section, such persons or any of them may also be present and take part, or may send a power of attorney to the judicial procurator or to any other person, should they think fit to do so; and such appearance or appointment of mandataire shall terminate the mandate of the judicial procurator.

3. Section 24 of the act 39 Vic., cap. 33 shall apply to proceedings under this act.

*(Notaries may prepare the non-contentious proceedings specified in the third part of the code of civil procedure and submit the same to the judge or to the prothonotary; and may especially sign, in the name of the applicants, without any special power, requests or petitions for the summoning of a family council, in relation to tutorships, curatorships, sale or alienation of the property of minors or interdicted persons, partition or licitation, homologation en justice, the affixing and the removal of seals, as also all other petitions, or proceedings in which the action of the judicial authority, or of any other public authority whatever, is to be asked for.)—39 Vic., c. 33, s. 24, Q.*

4. Articles 1298 and 1305 of the Code of Civil Procedure are supplemented in the particulars contained in this act.—41 Vic. (1878) c. 11, Q.

be provided according to law, with tutors or curators as the case may be.—2 Pig., 299, 300.—C.P.C., 929.

**1300.** The seals are removed in succession, as the making of the inventory progresses. If the effects contained under any seals are not all inventoried at one time, the seals are reaffixed upon the remainder.—2 Pig., 325.—C.P.C., 937.

**1301.** One or more returns of removal of seals must be made, as the inventory progresses.

**1302.** The return of removal of seals must contain:

1. The date;
2. The names, residence and occupation of the applicant, and his elected domicile;
3. A recital of the order for removal;
4. Mention that the notices required by article 1297 have been given;
5. What persons were present, and their respective allegations;
6. The names of the notary or notaries charged with making the inventory, and of the appraisers;
7. The verification of the seals, if they were unbroken; if not, the state in which they were found; saving recourse against whoever may be liable.—2 Pig., 325-6.—C.P.C., 936.

**1303.** If papers or effects be found which do not belong to the succession or the community, and are claimed by third persons, they are delivered to the proper persons, after describing them in the return,

if such description is demanded.—2 Pig., 327.—C.P.C., 939.

## CHAPTER SECOND.

### OF THE INVENTORY.

#### SECTION I.

##### *Of the Making of the Inventory.*

**1304.** An inventory of the property belonging to a deceased person, or to a community dissolved by his death, may be demanded by any person who has an interest in it; but the following persons only can take part in it:

1. Those who represent the deceased;

2. The consort of the deceased, or such consort's representatives, if a community existed;

3. The testamentary executor.—In the case of a community of property dissolved by a judgment, the inventory may be demanded by either of the consorts.—2 Pig., 328-9, 333.—C.P.C., 941.

**1305.** All persons entitled to take part in it must be present at the inventory, or have been notified to be present, in the same manner as for the removal of seals.\*—2 Pig., *ead. loc.*—C.P.C., 943.

**1306.** The person who is bound to have the inventory made chooses the executing

notary; the other parties may appoint a second notary.—In cases where seals have been affixed, the order for their removal designates the notary who is to make the inventory, subject to the above restriction.—C.P.C., 942.

**1307.** The inventory must be in authentic form.—2 Pig., 331.—C.P.C., 943.

**1308.** The inventory is composed of two parts. The first or the preamble, contains the names, occupation and residence of the persons making the inventory, of those who applied for it, of the persons present or who failed to appear, of all interested persons absent, if they are known, of the appraisers, and the respective allegations, pretensions and protestations of the parties.—The second part is the inventory proper, and contains:

1. A designation of the place where the inventory is made;

2. A description of the movable property and effects, and a valuation thereof made according to their real value by two sworn appraisers;

3. A designation of the amounts in specie or in valuable securities;

4. A designation of all papers, which must also be numbered from first to last and be paraphrased by one of the notaries;

5. All declarations of claims or indebtedness made by the parties;

6. Mention of the oath having been taken, at the end of the inventory, by those who, before the inventory, were in

\* See foot note to art. 1298.

in possession of the things, or who inhabited the house in which such things are, to the effect that no portion of them has been fraudulently removed or carried away with their knowledge;

7. The depositing of the papers and effects in the hands and custody of the person agreed upon by the parties or named by the judge.—1 Fig., 334-5-9.—C.P.C., 943.

**1309.** If, while the inventory is being made, difficulties arise between the parties as to their respective rights and pretensions, the notary is bound to record such pretensions in the inventory, together with all protestations against the same, leaving the parties their judicial recourse.—2 Fig., 340-1.—C.P.C., 944.

**1310.** Any of the parties may petition the judge to oblige the notary to enter their pretensions or protestations in the inventory, and the judge is bound to decide upon such petition in a summary manner, after the other parties have had notice of it.—As soon as the order made upon such petition has been served upon the notary, he is bound to transcribe it in the inventory and to conform to it.—2 Fig., 341.—C.P.C., 944.

**1311.** In the case mentioned in article 1309, the judge may order the exclusion of any of the parties when it is manifest that they have no right; or else he may order that proceedings shall be taken provisionally in their name, subject to the respective pro-

testations of the parties and to their right to obtain a decision upon their pretensions after the inventory is completed.—2 Fig., 333.

**1312.** With the consent of all the parties the sale may be proceeded with at once as the inventory is being made; and in such case no valuation of the effects by appraisers is necessary.

**1313.** The surviving consort or other person who is bound to have the inventory made, is entitled to the custody of the inventoried effects in preference to any one else; unless, upon being referred to, the judge, for some important reason, orders otherwise.—2 Fig., 343.

**1314.** The formalities and proceedings prescribed by the present section apply to all other cases in which an inventory is required.

## SECTION II.

### *Of the Sale.*

**1315.** When the sale of the movables is demanded by any of the heirs, pursuant to article 697 of the Civil Code, or by any other copartitioner, it takes place upon a day fixed, of which public notice must have been given.—2 Fig., 352.—C.P.C., 945-7.

**1316.** The sale takes place wherever the effects are situated, and for cash, unless it is otherwise agreed or ordered. C. P. C., 949.

**1317.** The sale is effected by a bailiff or a public orier,

or by any person agreed upon by the parties, and the moneys are received by the person thus employed.—2 *Pig.*, 352.

**1318.** The sale may take place either in the presence of the persons interested, or in their absence after they have received due notice of it.—*Ibid.*, C. P. C., 950.

**1319.** Minutes of the sale are drawn up, stating who of the persons interested were present, what notice was given to those who were absent, and specifying each object put up for sale, the price for which it was sold and the name of the purchaser.—2 *Pig.*, 352.—C. P. C. 951.

**1320.** If any of the coheirs or copartitioners are minors, the notice of sale must also be published and posted up in the same manner as in cases of sale of movables under execution.

### CHAPTER THIRD.

#### OF BENEFIT OF INVENTORY.

**1321.** Benefit of inventory can only be granted upon petition to the court or judge, stating that an inventory of the property of the succession will be or has been made, that the petitioner has not acted as heir, and that he believes it his interest not to confound his rights with the obligations of the succession.—2 *Edits et Ord.* in *Svo.*, p. 104.—C. S. L. C., c. 78, ss., 2, 6, § 2.

**1322.** [The beneficiary heir is bound to give notice of his

character as such, by an advertisement, as mentioned in article 1010.]

**1323.** Benefit of inventory is only granted on condition of security being given to the amount and in the manner fixed by the court or judge, that the petitioner will render an account and pay to such person as may be entitled thereto whatever moneys he may receive.—2 *Pig.*, 367-8.

**1324.** An heir under benefit of inventory cannot sell the movable property of the succession without observing the formalities required for the sale of movables under execution.—2 *Pig.*, 362.—C. P. C., 938.

**1325.** The heir under benefit of inventory, cannot sell the immovables without the consent of all the creditors and legatees of the deceased.

**1326.** [In cases where the beneficiary heir has any claims to exercise against the succession, he must cause a curator to be named, the same formalities being observed as are prescribed for the appointment of curators to vacant successions.]

### CHAPTER FOURTH.

#### PROVISIONAL POSSESSION.

**1327.** Provisional possession, whenever it may be demanded, must be applied for by petition to the superior court, in the district in which the absentee or deceased person had his last domicile, or, if he

had no domicile in Lower Canada, in the district in which the property is situate.

**1328.** The petition in the case of absentees must be accompanied with an act of notoriety, by three witnesses duly sworn, and establishing the facts upon which the petition is based, and also with such other proof as the court may deem necessary.

**1329.** [Provisional possession cannot be granted until after notice has been given and published, in the manner required for the summoning of absentees, calling upon all persons who may have any rights against the succession or the property in question to bring their claims before the court.]

**1330.** The proceedings upon such claims and upon the petition for provisional possession are the same as upon ordinary suits.]

## CHAPTER FIFTH.

### OF VACANT SUCCESSIONS.

**1331.** If the natural or testamentary heir renounces the succession, and no person comes forward to accept it within the delays allowed for making an inventory and deliberating; or if there is no known heir, the succession is deemed vacant.—C. C., Suc. 89 b, 90.

**1332.** When a succession is deemed vacant, any creditor or legatee, or the heir who has renounced, may demand the

appointment of a curator to such vacant succession.—2 Pig., 509.

**1333.** The judge proceeds to such appointment after taking the advice of the relations and creditors of the deceased, convened in the manner prescribed by such judge.

**1334.** The curator is bound:

1. To make oath that he will faithfully and to the best of his ability administer the property of the succession and render an account thereof;

2. To give notice of his appointment in the same manner as curators to the property of dissolved corporations;

3. To cause an inventory to be made, observing the same formalities as in ordinary successions;

4. To cause the movables to be sold, observing the same formalities as in the case of successions in which minors are concerned.—2 Pig., 510.

**1335.** He cannot sell the immovables, nor shares or stock in manufacturing or financial associations, without the consent of all the parties interested.—*Ibid.*

**1336.** He is bound to render an account of his administration, in the same manner as any other curator, and also from time to time whenever required by a competent court or by a judge to do so.—*Ibid.*, 511.

### OF LETTERS OF VERIFICATION AND PROOF OF HEIRSHIP.

1. *Whenever, in this province, an abintestate succession de-*

solves, having property situate outside of its limits or debts due by persons not residing therein, the heirs, or one or more of them, may apply to the superior court, or to one of the judges of the court, in the district in which the deceased had his domicile, or if he had none, to the superior court or to one of the judges of the court in the district in which he died, for "letters of verification" of the heirs to whom the succession has devolved.

2. The application is made by a petition, setting forth the death of the person whose succession has devolved, the fact that he died without leaving a will, and having property situate outside the province or debts due by persons not residing therein, the persons who are his heirs, their relationship to him and their filiation, and praying for letters of verification which declare what persons have been proved to be the heirs of the deceased and in what proportions.

3. The petition must be accompanied with an affidavit of the petitioner, or of a competent person, attesting the truth of the facts therein alleged.

4. The petition, with a notice of the time when it will be presented, must be served upon the other known heirs who reside in the province; and a summary notice of the intended application, and of the time when it will be made, must be inserted, once a week during four consecutive weeks, in one newspaper published in the English language, and in one newspaper

published in the French language, in the district.

There must be an interval of at least five days between the day of service of the petition and that fixed for the presentation thereof, with an additional day for each additional five leagues when the distance between the court house and the place of the service exceeds five leagues; and the day of such presentation must be at least thirty days from the last insertion of the summary notice.

5. The petitioner must produce with the petition the acts of civil status necessary to establish the allegations, and when any such act of civil status cannot be produced, the petition must be accompanied by an affidavit to justify its absence.

6. Any heir or his legal representative may enter an appearance, and may contest either the application or any allegation of the petition.

7. The intervenants are bound to plead within four days from their appearance, and the petitioner must answer within three days from the filing of the pleas, on pain in either case of foreclosure, unless a longer delay be granted by the court or a judge.

8. Proof is made and the parties are heard according to the ordinary rules of procedure; the written proof produced and the depositions, or the notes of the evidence must remain of record.

9. When the application is justified, the court or judge renders judgment granting "letters of verification," which



declare what persons have been proved and found to be the heirs of the deceased and specify in what proportions.

10. Letters of verification may be contested by an action to that end before the superior court, in the district where they were granted, by any heir of whom mention has been omitted and who was not an intervenant, and they may be either corrected or set aside by the judgment to be rendered in such action.

11. The declaration, in an action in contestation of letters of verification, must be accompanied with an affidavit of the plaintiff or of a competent person, denying the correctness of these letters, stating in what their incorrectness consists, and further attesting the truth of the facts alleged in the declaration; and all the heirs mentioned in the contested letters of verification or their representatives must be impleaded.

12. The declaration and affidavit must be produced and filed at the time of the issue of the writ; and notice of the con-

testation under the signature of the prothonotary, must be published in the same manner as the summary notice of an application for letters of verification.

13. When the action in contestation of letters of verification is maintained, the judgment either corrects them, or revokes them. Corrected letters of verification have the same effect as the original letters; they may also be contested by any heir who was neither an intervenant nor a party in any previous action in contestation.

14. Except during the pendency of an action of contestation, authentic copies of "letters of verification," either original or corrected, as the case may be, shall be delivered, under the seal of the court, to all persons, requiring the same, for use outside of the province, in all proceedings or circumstances, where it is required to prove who are the heirs of the deceased or to obtain ancillary or subsidiary letters of administration. —41 Vic., (1878) c. 10, Q.

## TITLE SEVENTH.

### GENERAL PROVISIONS APPLYING TO THE DIFFERENT TITLES OF THE THIRD PART OF THIS CODE.

**1337.** In all proceedings under the different titles of the third part of this code, the delays upon summons are the same as those prescribed in article 890.

**1338.** All applications made or proceedings brought before a judge must remain in the records of the court and form part thereof.

**1339.** The prothonotary of

the superior court may exercise all the powers conferred upon the court or a judge thereof; but any decision by such prothonotary is subject to be revised by a judge, upon application being made to that effect, after notice given to the persons interested.—C. S. L.C., c. 78, ss. 24-5.

**1340.** All decisions of a court or a judge are also subject to a review by three judges of the superior court, according to and in conformity with the provisions contained in articles 494 and following.—C.S. L.C., c. 86, s. 4.—27 & 28 Vic. c. 39, s. 20.

## TITLE EIGHTH.

### OF ARBITRATIONS IN GENERAL.

**1341.** Submission is an act by which persons in order to prevent or put an end to a lawsuit, agree to abide by the decision of one or more arbitrators whom they agree upon.—Pot., P.C., 109.—1 Couchot, 30.

**1342.** Those persons only can enter into a submission who have the legal capacity to dispose of the objects comprised in it.—1 Cou., 30.—C. P. C., 1003.

**1343.** The appointment of arbitrators by the court is regulated in the second part of this code.

**1344.** Deeds of submission made out of court must state the names and additions of the parties and arbitrators, the objects in dispute, and the time within which the award of the arbitrators must be given.—Pot., P.C., 109. *Contra* C.P.C., 1007.

**1345.** Submission must be in writing.—Pot., P.C., 109.—C. P. C., 1005.

**1346.** The arbitrators must hear the parties and their proofs respectively, or establish a default against them, and decide according to the rules of law; unless by the submission they have been exempted from doing so, or unless they have been named as mediators.—Pot., C. P., 199.—C. P. C., 1008, 1019.—[The witnesses to be examined before the arbitrators may be sworn before the prothonotary or the clerk of the circuit court or the commissioner of the superior court.]

**1347.** During the delay fixed by the submission the appointment of the arbitrators cannot be revoked, except with the consent of all the parties. If the delay is not fixed, either of the parties may revoke the submission when he pleases.—1 Couchot, 30.—C. P. C., 1008.

**1348.** The submission becomes inoperative:

1. In the case of the death, refusal, withdrawal or inability

to act of one of the arbitrators, unless some clause provide that it shall avail notwithstanding, or that such arbitrator shall be replaced by another, chosen by the parties or by the remaining arbitrator or arbitrators, or otherwise;

2. In the case of the decision not being given before the expiration of the delay fixed;

3. By the failure to agree, if the appointment of a third arbitrator has not been provided for;

4. By the mutual consent of the parties;

5. By the loss of the object which forms the subject of the submission;

6. By the extinction of the obligation which formed the subject of the submission.

7. By revocation in the case of the preceding article.—Bonnin, 647.—Pot., P. C., 109.—1 Cou., 30.—C. P. C., 1012.

**1349.** Arbitrators cannot be recused, except for reasons which have arisen or have been discovered since their appointment.—C. P. C., 1014.

**1350.** If the arbitrators fail to agree and the appointment of a third arbitrator has been provided for, such appointment is made in conformity with the submission, and the case is examined over again.

**1351.** No award of arbitrators can be rendered when

there are more than one, unless the two named or one of these and the third arbitrator agree upon each item of the award.—1 Cou., 31.

**1352.** Awards of arbitrators are made out in notarial form, or deposited with a notary, who draws up an authentic act of the deposit, and they must be given or pronounced to the parties, or served upon them, within the delay fixed by the submission.—Pot., P. C., 109.—1 Cou., 30.—1 Bornier, 235.—C. P. C., 1026.

**1353.** Extra-judicial awards of arbitrators can only be executed under the authority of a competent court, upon a suit brought in the ordinary manner, to have the party condemned to execute them.

**1354.** [The court before whom such a suit is brought may examine into any grounds of nullity which affect the award, or into any questions of form which may prevent its being homologated; but it cannot enquire into the merits of the contestations; nevertheless, when a penalty has been stipulated in the submission, the court may do so whenever the party contesting has paid or tendered the amount of the penalty either to the party who accepts the award or into court.]—Pot. P. C., 110.—1 Cou., 30.—3 L. C. R., p. 482.

## TITLE NINTH.

DIVISION OF LOWER CANADA INTO DISTRICTS FOR  
THE ADMINISTRATION OF JUSTICE.

**355.** [Lower Canada is divided into twenty districts, in manner set forth in the following schedule, the first column whereof contains the name of each district;—the second column, the places which are comprised within the district;—and the third column, the name of the place at or near which the sittings of the superior court are held, and where the district court-house and gaol are situated :

## SCHEDULE.

Names of districts.	Places Comprised.	Chief-Places.
Van Rensselaer .....	Counties of Ottawa and Pontiac.	Village of Aylmer.
Montreal .....	Counties of Hochelaga, Jacques Cartier, Laval, Vaudreuil, Soulanges, Laprairie, Chambly, Verchères; and The City of Montreal.	City of Montreal.
Terrebonne ..	Counties of Argenteuil, Two Mountains and Terrebonne.	Village of St. Scholas- tique.

Names of Districts.	Places Comprised.	Chief-Places.
Joliette.. ....	Counties of L'Assomption, Montcalm, and Joliette.	Town of Industrie.
Richelieu .....	Counties of Richelieu, Yamaska, and Berthier.	Town of Sorel.
Three Rivers.	Counties of Maskinongé, St. Maurice, (including City of Three Rivers.) Champlain and Nicolet.	City of Three Rivers.
Quebec .....	Counties of Portneuf, Quebec, Montmorency, Levis, Lotbinière; and The City of Quebec.	City of Quebec.
Saguenay.....	Counties of Charlevoix, and Saguenay.	Parish of St. Etienne de la Malbaie or Murray Bay.
Chicoutimi...	County of Chicoutimi.	Chicoutimi.
Gaspé.....	Counties of Gaspé and Bonaventure.	New Carlisle, in the Co. of Bonaventure. Percé, in the County of Gaspé.
Rimouski .....	County of Rimouski.	Parish of St. Germain de Rimouski.
Kamouraska.	Counties of Kamouraska, and Temiscouata.	Parish of St. Louis de Kamouraska.

Names of Districts.	Places Comprised.	Chief-Places.
Montmagny..	Counties of L'Islet, Montmagny, and Bellechasse.	Village of Montmagny.
Beauce .....	Counties of Beauce, and Dorchester.	Parish of St. Joseph de la Beauce.
Arthabaska..	Counties of Megantic, Arthabaska, and Drummond.	Parish of St. Christophe d'Arthabaska.
Sherbrooke...	Counties of Richmond, (including the town of Sherbrooke.) Wolfe, Compton, and Stanstead.	Town of Sherbrooke.
Dundas .....	Counties of Shefford, Missisquoi, and Brome.	<i>Sweetsburgh</i> * in the township of Dunham.
Hatchinthe	Counties of St. Hyacinthe, Bagot, and Rouville.	City of St. Hyacinthe.
St. John .....	Counties of St. John, Napierville, and Iberville.	Town of St. John.
Beauharnois.	Counties of Huntingdon, Beauharnois, and Chateauguay.	Town of Beauharnois.

\* 38 Vic., (1875) c. 19, Q.

**1356.** [If the name of the place which is the chief-place of a district is changed, such place nevertheless continues to be the chief-place under its new name. If the name of such place has been changed since the passing of the Lower Canada Judicature acts of 1857 and 1858, and is different from that mentioned in the above schedule, the chief-place must be designated by the name given by such change.]

**1357.** The officers connected with the administration of justice in each of the new districts created by the Lower Canada Judicature acts of 1857 and 1858, are the same as in the old districts subsisting immediately before the time when such new districts were consti-

tuted, and proper persons may in like manner be appointed to fill such offices; and all the provisions of law touching such offices respectively, as well with regard to the security to be given by the persons holding the same, or the appointment of deputies, as with regard to other matters, extend to the like officers in the new districts, subject always to any provisions of any other act then in force.]

**1358.** The *banlieue* of Quebec, as defined in chapter 75 of the consolidated statutes for Lower Canada, is and always has been part of the district of Quebec. The *banlieue* of Three Rivers is and always has been part of the district of Three Rivers.]

## FINAL PROVISIONS.

**1359.** The forms contained in the appendix to this code, whether in connection with this code or with the Civil Code, or others to the same effect, may be used in the cases to which they are intended to apply.

**1360.** The laws concerning procedure in force at the time of the coming into force of this code, are abrogated:

1. In all cases in which this code contains any provision

having expressly or impliedly that effect;

2. In all cases in which such laws are contrary to or inconsistent with any provision of this code, or in which express provision is made by this code upon the particular matter to which such laws relate.—Except always that as regards proceedings, matters and things anterior to the coming into force of this code, and to which

its provisions could not apply without having a retroactive effect, the provisions of law which without this code would apply to such proceedings, matters and things remain in force and apply to them, and this code applies to them only in so far as it coincides with such provisions.

**1361.** If in any article of this code founded on the laws existing at the time of its promulgation, there be a difference

between the English and French texts, that version shall prevail which is most consistent with the provisions of the existing laws on which the article is founded; and if there be any such difference in an article changing the existing laws, that version shall prevail which is most consistent with the intention of the article, and the ordinary rules of legal interpretation shall apply in determining such intention.

END OF THE CODE OF CIVIL PROCEDURE.

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RULES OF PRACTICE  
IN THE  
VARIOUS COURTS  
HAVING  
CIVIL JURISDICTION  
IN THE  
PROVINCE OF QUEBEC.

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# RULES OF PRACTICE

## OF THE

### SUPERIOR COURT FOR LOWER CANADA.

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Where the following rules have not been altered by some express provision of the foregoing Code of Civil Procedure, they are the rules still in force in the said court.

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#### CHAPTER I. OF THE OFFICERS OF THE COURT.

I. That the queen's counsel, and barristers, who practice in this court, do appear, when in court, habited in black, and in such robes and bands as are worn by the queen's counsel and barristers in Westminster Hall, as heretofore hath been used, and that no queen's counsel, or barrister, be heard in any cause who is not so habited.

II. That every attorney practising in this court, do file, in writing in the office of the prothonotary, an election of his domicile, as such attorney, at some place within a mile of the

court house at the place where he practises; and that in default of his so doing, he shall be considered to have elected his domicile as such attorney, for all intents and purposes, in the office of the prothonotary at such place.—V. art. 85, C. P.

III. That the prothonotary of this court do appear, when in court, habited in black and in such robes and bands as are worn by the prothonotary in Westminster Hall, as heretofore hath been used; that the sheriff, when in court, do appear habited in black, with his robe, his wand of office and sword as heretofore hath been used; and that the crier, when in court, do appear habited in black and

in such robe as is worn by that officer in Westminster Hall.

IV. That the offices of the prothonotary and of the sheriff, be open on every juridical day during term, and also in the districts of Quebec and Montreal, on every Monday being a juridical day, from the hour of eight in the morning until the hour of six in the afternoon; and in the districts of Quebec and Montreal, during vacation, Mondays excepted, from the hour of nine in the morning until the hour of four in the afternoon of every juridical day, and in the districts of Three Rivers, St. Francis, and Gaspé, during vacation, from the hour of nine in the morning until noon, and from the hour of two to the hour of four in the afternoon.

V. That the sheriff, the prothonotary and the crier, do personally attend in court, in their respective places, *de die in diem*, during each term from the opening until the rising of the court, and in like manner during all sittings of the court held in vacation.

VI. That no barrister, or attorney, prothonotary, sheriff, crier, bailiff, or sheriff's officer, shall be bail or surety in any action or proceedings cognizable by this court, or by any judge thereof.

VII. That all orders and rules for the conduct and regulation of the sheriff in the execution of his duty, shall extend to the coroner, in all cases in which such duty shall be executed by him.

## CHAPTER II.

### GENERAL ORDERS.

VIII. That the rules and orders of practice of this court shall be fairly entered by the prothonotary in a book to be by him kept for that purpose; and all decisions of this court on points of practice, shall also be entered by the prothonotary, when so directed by the court, in another book to be by him kept for that purpose—to each of which books there shall be an index, and all practitioners of this court, shall during office hours, have access thereto, and therefrom be allowed to take extracts and copies *gratis*.

IX. That all writs and other practice forms, which are or shall be settled by this court, shall in like manner be fairly entered by the prothonotary in a register to be by him kept for that purpose, to which there shall be an index, and all practitioners of this court shall at all times, during office hours, have access thereto, and therefrom be allowed to take extracts and copies *gratis*.

X. That every wilful breach of an order or rule of practice of this court (for which no fine or other specific punishment is provided in the body of such rule or order) shall be considered a contempt of court, and punished accordingly.

XI. That in computations of time no fractions of a day be allowed, nor shall any Sunday or binding holiday (*fête d'obligation*) be reckoned unless

otherwise provided for by law.  
—V. art. 24, C. C. P.

XII. That whenever any delay shall expire on a non-judicial day, such delay shall be enlarged to the next judicial day.—*Ibid.*

XIII. That no paper of any description shall be received by the prothonotary, in any cause, unless the same be regularly docketed by mentioning the title and number of the cause, the general description of such paper, and the party filing the same.

### CHAPTER III.

#### OF PROCESS AD RESPONDENDUM.

XIV. That a register of all and every process *ad respondendum* whatsoever, issued from this court, specifying the names of the parties, the amount demanded, the cause of action, and the return day of each process respectively, shall be kept by the prothonotary, to which all persons, during office hours, shall have access *gratis*.

XV. That no process *ad respondendum* of any description shall issue, until an appearance for the party requiring such process, and a *præcipe*, for the same, be filed in the office of the prothonotary.—V. art. 44, C. C. P.

XVI. That no process *ad respondendum*, founded upon affidavit, shall issue in any suit until the affidavit upon which such process is founded be filed by the plaintiff in the office of the prothonotary.

### CHAPTER IV.

#### OF CERTIFICATES OF SERVICE, &c.

XVII. That every affidavit or certificate of service shall particularly describe the manner, place and time of service, in letters, and also the distance, from the place of service, to the court house, at which the party is required to appear.—V. art. 78, C. C. P.

XVIII. That all services on the attorney of any party be made between the hours of nine a.m. and six p.m., from the twenty-first of March to the twenty-first of September; and between the hours of nine a.m. and five p.m., during the remainder of the year.—That every service of process and other service on any party to a suit be made between the hours of eight in the forenoon and the hour of seven in the afternoon.—V. art. 55, C. C. P.

### CHAPTER V.

#### OF APPEARANCES—AND OF BAIL.

XIX. That of every appearance which shall be filed for a defendant, a duplicate or certified copy shall be served during the same day upon the plaintiff's attorney.—V. art. 83, C. C. P.

XX. That no change of attorneys shall in any case be allowed without leave of court, or of a judge in vacation.—V. arts. 200 *et seq.*, C. C. P.

XXI. That an attorney who shall appear for any person shall not, without leave of court, or a judge in vacation, be permitted to withdraw from the suit in which he shall have so appeared.—V. art. 201, C. C. P.

XXII. That in every suit in which a party shall cease to be represented by attorney he may be compelled, by rule of court, to substitute an attorney or an appearance in person; and in default of a plaintiff so doing, his action shall be dismissed with costs, *sauf à se pourvoir*—in default of a defendant so doing it shall be competent for the plaintiff to proceed *ex parte*.—V. art. 203, C. C. P.

XXIII. That no surrender of any defendant, by himself or by his bail, shall be valid or effectual, or allowed as such, unless such surrender be made in open court, or before one of the judges of this court in vacation, nor unless the court or such judge before whom such surrender shall be made, shall have made an entry or minute of such surrender, and shall have committed such defendant thereupon to the custody of the sheriff in discharge of such bail; and in every case of surrender made before any judge of the court, the minute of such surrender, shall forthwith be returned into the office of the prothonotary, and there be filed of record, in the suit to which such minute shall relate, and a copy of such minute shall, by the prothonotary, be delivered with such

defendant to the said sheriff.—V. art. 831, C. C. P.

## CHAPTER VI.

### OF EXHIBITS AND COMMUNICATION OF PAPERS.

XXIV. That all paper-writings, whereon any declaration or other pleading is founded, or duly certified copies of such papers, shall, with lists thereof, be filed, together with such declaration or other pleading respectively, and not afterwards, unless by the special permission of the court; and that all other paper-writings which any party shall see fit to produce in evidence, together with the originals of all *actes sous seing privé*, copies of which shall have been filed as hereinbefore directed, shall be exhibited and filed with lists thereof, before the *enquête* of the party producing the same be closed.—V. arts. 99 *et seq.*, C. C. P.

XXV. That every list of exhibits shall be an index to all the exhibits therewith filed, by number, title, date and description, under the signature of the attorney or party filing such exhibits, and any exhibit, which shall not be so mentioned in such list, shall not be received.—*Ibid.*

XXVI. That all delays to plead shall be reckoned from the day on which the exhibits, in support of the pleading to be answered, shall have been filed.—V. art. 103, C. C. P.

XXVII. That all parties to a suit shall be entitled to communication of all exhibits and other paper-writings, filed in such suit, at the office of the prothonotary.—V. art. 104, C. C. P.

XXVIII. That of all exhibits or other paper-writings in any cause, being copies of *actes authentiques* or of papers *sous seing privé*, communication shall be given on the receipt of the party indorsed, dated and signed upon the list of exhibits, and such party shall be entitled to retain such copies in communication during forty-eight hours; it being expressly provided that no original paper-writing shall be removed from the office of the prothonotary for any cause whatsoever.

XXIX. That no exhibit, in any cause, shall be withdrawn pending such cause, or within a year and a day from the final judgment in such cause, without an order of the court or of a judge in vacation; and before such exhibit or other paper-writing be withdrawn, a copy thereof (except of authentic instruments), certified by the prothonotary, shall be filed of record, unless otherwise ordered by the court or judge.

## CHAPTER VII.

### OF PLEADINGS.

XXX. That whenever the particulars of any *demande* shall not be disclosed by the declaration, and no bill of par-

ticulars shall be therewith filed, no proceedings shall be had upon such declaration, but the same shall, upon the motion of the adverse party, be rejected, and thereupon the action of the plaintiff be dismissed, unless it be otherwise ordered by the court upon sufficient cause shewn.—V. art. 50, C. C. P.

XXXI. That of every pleading filed a certified copy shall be served upon the adverse party, and, until such service shall have been made, the pleading shall not be held to have been filed.—V. art. 462, C. C. P.

XXXII. That no *exception déclinatoire, péremptoire à la forme* or *dilatatoire* be received unless the party offering such exception shall therewith deposit in the hands of the prothonotary the sum of two pounds one shilling and eight-pence for every such exception, to answer the costs of the adverse party, if such exception be dismissed or withdrawn, in the proportion of eleven shillings and eight-pence to the prothonotary, and one pound ten shillings to the attorney.—V. art. 112, C. C. P.

XXXIII. That upon every *exception déclinatoire, péremptoire à la forme* or *dilatatoire* the plaintiff may move for hearing, without an answer; it being expressly provided that every plaintiff, so moving shall thereby, for the purpose of such hearing, be held to confess the allegations contained in such exception.

XXXIV. That in every case in which an *exception déclina-*



*toire, dilatoire or péremptoire à la forme* shall be filed, the delay to plead to the merits shall be computed from the day on which such exception shall have been disposed of.—V. art. 131-3, C. C. P.

XXXV. That with every *défense au fonds en droit* shall be filed a notice assigning all the grounds of such *défense au fonds en droit*; it being expressly ordered that no party shall be permitted to urge any ground, in support of a *défense au fonds en droit*, not so set forth and particularised in such notice.—V. art. 147, C.C.P.

That every demurrer to a plea or special answer, shall contain an assignment of the causes on which that demurrer is founded. — (Promulgated, Quebec, June, 1854.)

That it shall be lawful for a defendant, by leave of a judge of this court, to pay into court the sum of money which such defendant acknowledges to owe to the plaintiff, and thereupon, unless the plaintiff shall accept thereof in full discharge of his suit, the said sum shall be struck out of the declaration and paid out of court to the plaintiff; and upon the trial of the issue, the plaintiff shall not be allowed to give evidence for the sum so acknowledged to be due.—*Additional rule promulgated, Quebec, June, 1854.*

#### CHAPTER VIII.

OF INCIDENTAL CROSS DEMANDS, INTERVENTIONS AND EVOCATIONS.

XXXVI. That every inci-

dental cross demand shall be filed at the same time with the plea to the action; and no such incidental cross demand shall be afterwards received.—V. art. 152, C. C. P.

XXXVII. That every incidental cross demand shall be deemed a distinct action, and shall not delay the proceedings of the plaintiff.—V. art. 152, C. C. P.

XXXVIII. That every cause brought by evocation before this court, and in which the plaintiff shall think fit to file another declaration, such plaintiff shall, within eight days from the allowance of such evocation, file such other declaration.

XXXIX. That the rules, orders and delays prescribed by law, or by this court, with respect to the pleadings upon demands in chief, shall in all things apply to and be the rules, orders and delays, with respect to all pleadings upon incidental demands, interventions and causes brought before the court by evocation.

#### CHAPTER IX.

OF ENQUÊTES.

XL. That there shall be kept in the office of the prothonotary, a roll, to be called the *rôle des enquêtes*, upon which shall be inscribed all causes laid down for the adduction of proof.—V. art. 237, C. C. P.

XLI. That no proof shall be adduced in any contested cause

unless two days in term, or eight days in vacation, shall have intervened between the notice of such inscription and the day appointed for the making of proof.—V. art. 235, C. C. P.

XLII. That as soon as the issues of fact shall be perfected in any cause in which no issue of law hath been raised, or, if raised, hath been disposed of, either party may inscribe the cause upon the *roll des enquêtes*.—V. art. 234, C. C. P.

XLIII. That if, on the day appointed for adducing proof, the party bound to proceed shall not appear, or appearing shall not proceed, or shew legal cause for not proceeding, his *enquête* shall, upon the application of the adverse party, be declared closed, and a day, if necessary, shall be fixed for the *enquête* of such adverse party upon his application to that effect.—V. art. 283, C. C. P.

XLIV. That a witness shall be examined by one counsel and no more, and cross-examined by one counsel and no more.

XLV. That any cause inscribed on the *roll des enquêtes* shall remain thereon, until the *enquête* in such cause shall have been declared closed, and shall be held to be continued from day to day without any special application to that effect. Provided always that if more than one day shall elapse without any proceeding or application in such cause, and without the same being specially continued to a day certain, no proceeding or ap-

plication shall thereafter be taken or received without notice of, at least one day to the adverse party.

XLVI. That all interrogatories to be annexed to any order or commission, in the nature of a *commission rogatoire*, unless settled by consent, shall be allowed by one of the judges.—V. art. 311, C. C. P.

XLVII. That if any such order or commission shall not be returned on the day appointed for such return, (if such there be), or within a reasonable time after the issuing thereof, (if such order or commission be returnable without delay) it shall be competent for the parties to proceed in such cause, as if no order or commission had issued, unless good cause to the contrary be shewn, on motion to that effect.

XLVIII. That either party shall, at any time, have a right, by application to the court in term, or to a judge in vacation, to cause the return to any order or commission to be opened, unless good cause to the contrary be shewn; but the return to an order or commission, issued at the instance of the defendant, shall not be opened until the plaintiff's *enquête* be closed.—V. art. 313, C. C. P.

XLIX. That in all cases in which the service of a rule for *serment décisoire* or for *faits et articles* shall be made within the distance of five leagues from the court house, there shall be one intermediate juridical day between the day

of service and the day of return, and when beyond that distance, one intermediate juridical day as above, and also one intermediate juridical day for every five leagues of distance.

That a party served with a rule to answer interrogatories upon *faits et articles*, shall give his answers before the closing of the *enquête* of the party who has obtained the rule; and that no answers shall be afterwards received, except by leave of the court obtained on a special application for the same.—(*Additional rule promulgated, (Quebec, June, 1864.)*)

## CHAPTER X.

### OF THE INSCRIPTION OF CAUSES FOR HEARING.

I. That there be kept in the office of the prothonotary a roll, to be called the *roll de droit*, upon which shall be inscribed all causes for hearing upon any issue of law, or upon the merits or other matter.

I.I. That no contested cause shall be heard upon any inscription on the *roll de droit* unless two juridical days shall have intervened between the inscription and the day appointed for the hearing.—V. art. 462 C. C. P.

I.II. That so soon as any issue of law is perfected either party may inscribe the cause on the *roll de droit* for hearing on such issue; and if, on the day appointed for the hearing,

the party by whom such law issue hath been raised shall not appear, and his adversary shall appear, the pleading whereby the same hath been raised shall be dismissed with costs. If neither party be present the inscription shall be discharged.

LIII. That so soon as the *enquête* upon any preliminary exception shall be closed, either party may inscribe the same upon the *roll de droit*, for hearing on the merits of such exception, and if on the day appointed for the hearing thereof, the party excipient shall not appear, his exception shall on the application of the adverse party be dismissed with costs. If neither party appear, the inscription shall be discharged.

LIV. That as soon as the *enquête* in any contested cause shall be closed, either party may inscribe such cause on the *roll de droit* for hearing on the merits, and if, on the day appointed for the hearing thereof, the plaintiff shall not appear, his action shall on the application of the adverse party be dismissed with costs. If neither party appear, the inscription shall be discharged.

## CHAPTER XI.

### OF MOTIONS.

LV. That no motion be received or heard unless previous notice thereof, of at least one day, be given to the adverse

party, excepting the motions whereupon side-bar rules may be obtained, and those herein-after specially mentioned.

LVI. That the parties shall not be heard on any rule unless one day shall have intervened between the service of such rule and the day appointed for the hearing thereof.

LVII. That every motion founded on special matter shall contain the grounds on which such motion is made, and no party shall be permitted to urge any ground in support of a motion not set forth in such motion.

LVIII. That the following motions, being motions of course, may be made and filed in the office of the prothonotary, and be by him received, in the same manner as if made in open court :—

1. For the sheriff to return a writ—*nisi* ;

2. For particulars—*nisi* ;

3. For security for costs, the plaintiff being a person without that part of the Province, heretofore Lower Canada, and stated so to be, in the declaration—*nisi* ;

4. To give security for costs—*nisi* ;

5. For a jury trial—*nisi* ;

6. To strike a cause from the *roll de droit* or *roll des enquêtes*—*nisi* ;

7. For a reference to *experts*—*nisi* ;

8. To set aside or confirm a report—*nisi* ;

9. To pay money into court—*nisi* ;

10. To file a *retraxit*—*nisi* ;

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11. To dismiss for want of proceedings—*nisi* ;

12. To discontinue on payments of costs—*nisi* ;

13. For *acte* to party that he does not contest an opposition—*nisi* ;

14. For a rule on defendant for *main levée* on such opposition—*nisi* ;

15. To homologate a report of distribution—*nisi* ;

16. For the sheriff to bring in the body—*nisi* ;

LIX. That the following motions may be made and adjudicated upon without notice to the adverse party :—

1. For judgment pursuant to confession, or to a verdict of jury ;

2. To defer or refer the *serment décisoire* ;

3. For *faits et articles* ;

4. To obtain *acte* of the court.

LX. That a party intending to produce any affidavit, or other paper-writing in support of any motion or rule, shall, with the notice of such motion, or copy of such rule, serve on the opposite party copies of the affidavits, or other paper-writings intended to be produced, and in default of his so doing, the opposite party shall be entitled to delay, until the next day, to take communication of such papers.

LXI. That the validity of every report of *experts* or award of arbitrators shall be decided upon a motion, or upon a rule *nisi* to homologate the report, or to set the report aside, as the case may be.—V. art. 347, C. C. P.

LXII. That every applica-

tion for security for costs shall be made within four days from the appearance of the party making such application.—V. arts. 120, 128-9, 135, C. C. P.

LXIII. That all costs to which in any case, a party is entitled upon a motion in any way, be asked for at the time at which such motion is made and heard, and not afterwards.

## CHAPTER XII.

### OF TRIAL BY JURY.

LXIV. That in every cause wherein a trial by jury may by law be had, the party desiring such trial shall declare his option, either by his declaration or plea, or by motion to be made within four days after the issue is perfected; and after the said four days, either party may move for the appointment of a day for trial and the issuing of a *venire facias*.—V. art. 350, C. C. P.

LXV. That with every such motion the party shall be bound to deposit, in the hands of the prothonotary, the sum of five pounds six shillings and eight pence, to be distributed as follows:—To the prothonotary for striking the jury, for the writ of *venire facias*, for calling and swearing the jury, and for recording the verdict, twenty shillings.—To the sheriff for his services according to the tariff, twenty shillings.—To the crier, six shillings and eight pence.—And for the jurors, the sum of three pounds, the amount allowed by law.—V. art. 365, C. C. P.

LXVI. That the sheriff shall not be bound to summon such jury until a sum of money be placed in his hands, sufficient to pay the costs of summoning such jury.

LXVII. That any difference respecting the amount of the sum to be so deposited be determined by one of the judges.

LXVIII. That if the sum so deposited be more than sufficient to pay such costs, the surplus shall be returned to the party who deposited the same; and if it be insufficient, the balance shall be paid to the sheriff before the jury shall be sworn.

LXIX. That the striking of the jury shall take place in the office of the prothonotary.—V. art. 367, C. C. P.

LXX. That the party who obtains an order for a *venire facias* shall give a notice to the opposite party, of at least one day, of the time appointed for the striking of the jury, but the want of such notice shall not prevent the striking of the jury, if the party entitled to notice do not object to such want of notice.

LXXI. That if the attorney of either of the parties make default to appear before the prothonotary at the time appointed for the striking of the jury; or appearing, shall refuse to strike out from the list of jurors, in such cause, the names of twelve, or of any lesser number of such jurors, the prothonotary, in the absence, or on the refusal of such attorney, shall strike out of the said list of jurors, twelve on behalf

of the party of such attorney, in the manner directed by law, or such lesser number as the attorney shall refuse or neglect to strike out.—V. art. 370, C. C. P.

LXXII. That in every case in which a trial by jury shall be ordered, two days at least before the day appointed for such trial, *factums* or paper books containing a statement of the facts to be proved and of the authorities in support of the demand and of the defence, be delivered by the parties respectively, sealed up, to the prothonotary, to be by him forthwith delivered to the judge whose duty it may be to preside at the trial of such case.—V. art. 393, C. C. P.

LXXIII. That so soon as the *venire facias* shall be returned, the parties shall be called, and if neither party shall appear, the jury shall be forthwith discharged; but if the plaintiff shall appear and the defendant, being so called, shall not appear, the default of such defendant shall be recorded, and thereupon the evidence of the plaintiff shall be heard *ex parte*, the verdict of the jury taken thereon, and judgment entered as to law and justice shall ascertain. And if the defendant being so called shall appear, and the plaintiff, being called, shall not appear, the default of such plaintiff shall be recorded and judgment of non-suit thereupon entered in due course, dismissing such plaintiff, *sauf à se pourvoir*, with costs to the defendant.—V. art. 394, C. C. P.

LXXIV. That in every case in which a jury shall be sworn, and the plaintiff in such cause shall choose at any time before the verdict of such jury shall be given, to become non-suit, and for that purpose shall withdraw from the court, such plaintiff shall be called, and not appearing, the default of such plaintiff shall be recorded, and judgment of non-suit shall thereupon be entered in due course, dismissing such plaintiff *sauf à se pourvoir*, with costs to the defendant.—V. art. 395, C. C. P.

LXXV. That a motion for judgment upon a verdict shall not be made until after the expiration of four days in term, from the day on which such verdict shall be recorded.—V. art. 421, C. C. P.

LXXVI. That every motion for a new trial, after verdict, be made on or before the fourth day in term next after the day on which such verdict shall be recorded.—V. art. 423, C. C. P.

LXXVII. That every motion in arrest of judgment after verdict, be made on or before the expiration of the fourth day in term, next after the day on which such verdict shall be recorded; except when a motion for a new trial shall have been made, in which case such motion in arrest of judgment shall be made on the second day next after the day on which such motion for a new trial, shall have been disposed of.—V. art. 424, C. C. P.

## CHAPTER XIII.

## OPPOSITIONS AND EXECUTIONS.

LXXVIII. That no writ of execution shall issue until a *præcipe* for such writ be filed in the office of the prothonotary, and that every such writ be endorsed or signed by the attorney or person by whom such writ shall be so sued out.—V. art. 545, C. C. P.

LXXIX. That a register of all writs of execution issued from this court, specifying the description of each writ, the parties to the cause in which it issues, the number of such cause, the name of the attorney or person by whom such writ shall be sued out, the amount to be levied by virtue thereof, the cause of action, the date of the judgment on which such writ shall be founded, the day on which such writ shall issue, and the return day thereof, be made and kept by the prothonotary in his office, to which all persons shall at all times, during office hours, have access *gratis*.—V. art. 718, C. C. P.

LXXX. That to all oppositions *afin d'annuller, afin de charge* or *afin de distraire*, there shall be annexed an affidavit in the form following:—

“*Lower Canada*, } In the Su-  
District of —, } perior court

PLAINTIFF;

*vs.*

DEFENDANT;

A.B., of—being duly sworn, doth depose and say that the *facts* articulated and set forth in the annexed opposition *afin*

*d*—, and each and every of them is and are true; and that the said opposition is not made with any intent unjustly to retard or delay the sale of the whole, or any part of the (*movable or immovable*) property, seized by virtue of the writ or writs of execution in this cause issued, but that the same is made in good faith for the sole purpose of obtaining justice.

“Sworn before me at —, this—day of— one thousand eight hundred and—.”  
—V. art. 651, C. C. P.

LXXXI. And any opposition to which an affidavit in form aforesaid shall not be annexed, shall not delay the execution of any writ of *feri facias* or *renditioni exponas* issued in any cause; and notwithstanding the service or filing of any such opposition, the sheriff shall in such cause, proceed to the due execution of such writ in like manner as if no opposition had been served or filed. It being nevertheless provided that all such oppositions shall be returned into this court with such writ.—*Ibid.*

LXXXII. That in all cases of opposition *afin de distraire* or *afin de charge*, founded upon title, it shall not be necessary to annex to such oppositions any affidavit in support of the same.

LXXXIII. That every opposition *afin de conserver* be filed, on or before the sixth day next after the return day mentioned in the writ of execution, under which the moneys claimed by such opposition shall have been levied; provided that in

case the said writ be returned into the office of the prothonotary on a day subsequent to the said return day, such opposition may be filed on or before the sixth day next after the day on which such execution shall be so actually returned. And no opposition shall be afterwards received, unless upon sufficient cause shewn, and upon such terms as the court shall adjudge.—V. art. 730, C. C. P.

*In the districts of Three Rivers, St. Francis, Gaspé, Ottawa and Kamouraska, the following rule prevailed before the promulgation of the Code:—* That every opposition *afin de conserver* be filed on or before the second day next after the return day mentioned in the writ of execution under which the moneys claimed by such opposition shall have been levied. Provided that in case the said writ be returned in the office of the prothonotary on a day subsequent to the said return day such opposition may be filed on or before the second day next after the day on which such execution shall be so actually returned. And no opposition shall be afterwards received, unless upon sufficient cause shown, and upon such terms as the court shall adjudge.

LXXXIV. That in every case wherein the plaintiff shall declare that he does not intend to contest an opposition *afin d'annuller*, *afin de distraire* or *afin de charge*, the opposant shall be entitled to judgment of *main levée*, without proof:

provided that the defendant, upon the service of a rule *nisi* to that effect, shall not shew cause to the contrary, or declare that he intends to contest such opposition.

LXXXV. That the rules, orders and delays, prescribed by law or by this court, with respect to pleadings, *enquêtes* and hearings upon demands in chief, shall be the rules, orders and delays, with respect to all pleadings, *enquêtes* and hearings upon oppositions of every description.

LXXXVI. That a register of all writs of execution, and of all oppositions filed in the office of the sheriff, containing a full description of such writs and oppositions, and of all proceedings and matters relating thereto, be made and kept by the said sheriff in his office, to which all persons shall, at all times during office hours, have access *gratis*.—V. art. 718, C. C. P.

LXXXVII. That any opposition, made without the ministry of an attorney of this court, which shall not contain an election of domicile on the part of the opposant, at some dwelling-house within one mile from the court house, shall not be received or filed.—V. art. 583, 722, C. C. P.

LXXXVIII. That every opposition shall contain the *moyens* upon which the same is founded, and that no other *moyens d'opposition* shall thereafter be received or filed.

LXXXIX. That with every opposition *afin de conserver*, shall be filed all the exhibits



in support thereof, with a list of such exhibits.

XC. That within twelve days after the return day of any writ of execution, and after the sheriff's return thereto, certifying that there are moneys in his hands subject to the order of the court, the prothonotary shall prepare and file a report of distribution.—V. art. 724, C. C. P.

*In the districts of Three Rivers, St. Francis, Gaspé, Ottawa and Kamouraska, the following rule prevailed before the promulgation of the Code of Civil Procedure* :—That within four days after the return day of any writ of execution, and after the sheriff's return thereof, certifying that there are moneys in his hands subject to the order of the court, the prothonotary shall prepare and file a report of distribution or of collocation.

XCI. That the prothonotary shall prepare a list of all such reports filed, and that such list shall be posted up in some conspicuous place in the office of the prothonotary.

XCII. That any party intending to contest such report shall file his contestation at the office of the prothonotary, on or before the expiration of eight days next after the filing of such report; provided always, that if the report of distribution be filed on any day other than a Monday, the delay for filing the contestation shall be computed from the Monday next following the day on which such report shall have been filed.—V. art. 742, C. C. P.

*In the districts of Three Rivers, St. Francis, Gaspé, Ottawa and Kamouraska, the following rule prevailed before the promulgation of the Code of Civil Procedure* :—That any party intending to contest such report shall file his contestation (after a copy thereof has been served on the interested party) at the office of the prothonotary on or before the expiration of two days next after the filing of such report.

XCIII. That immediately after the delay for filing such contestation shall have expired, if no contestation has been filed, the plaintiff, may move that the said report be homologated with costs: and if the plaintiff omit to make such motion, on the juridical day next following the expiration of the delay for the filing of contestations, any other party collocated may make such motion.—V. art. 749, C. C. P. — (*Subsequent promulgation, June, 1854.*)—That immediately after the delay for filing a contestation to a report of distribution shall have expired, if no contestation has been filed, the plaintiff may give notice that he will move on the first juridical day of the ensuing term, that the said report be homologated with costs; and if the plaintiff omit to give such notice on the juridical day next following the expiration of the delay for the filing of contestation, any other party collocated may give such notice.—That the said notice shall not be served on the parties; but that the same shall be

posted in the prothonotary's office, at least four days.—*Ibid.*

XCIV. That the rule obtained for the homologation of such report shall not be served on the parties, but that the same shall be posted in the prothonotary's office, as heretofore, at least four days.—*Ibid.*

*In the districts of Three Rivers, St. Francis, Gaspé, Ottawa and Kamouraska, the following rule prevailed before the promulgation of the Code of Civil Procedure:—*That the rule obtained for the homologation of any report or partial report shall not be served on the parties, but that the same shall be posted up by a bailiff of the court in the prothonotary's office, at least one juridical day.

XCv. That in every case in which a report of distribution shall be made and filed by the prothonotary, and a contestation of such report or of any claim or opposition on which such report shall be founded, shall be made and filed, such report, upon motion to be made as hereinafter mentioned, shall be confirmed and homologated, as to all uncontested claims and oppositions which shall precede in rank the claim or opposition which, by such contestation, shall be contested, and as to all other uncontested claims or oppositions (if any there shall be) which cannot be affected by such contestation; and judgment according to such report, in so far as the same shall be so confirmed and homologated, shall be entered up and recorded, unless cause to the con-

trary shall be shewn. It being hereby provided that the rule for such partial homologation shall not be served upon the parties, but that the same be publicly affixed in the office of the prothonotary at least four days. And that the plaintiff shall have an exclusive right to move for the partial homologation of such report during the juridical day next following the expiration of the delay for the filing of contestations; and if the plaintiff omit to move for the partial homologation of the report, within the said juridical day, immediately thereafter, any party collocated may move for such partial homologation.

XCvi. That none of the delays hereinbefore mentioned with respect to oppositions *afin de conserver*, and reports of collocation and distribution, shall be held to run during the month of August.—*V. art. 1, C. C. P.*

#### CHAPTER XIV.

XCvii. That any party requiring a notice of an application for a confirmation of title shall demand the same by a *præcipe*.—*V. art. 950, p. et seq., C. C. P.*

#### CHAPTER XV.

##### SAISIE-ARRÊT AFTER JUDGMENT.

XCviii. That any party intending to contest the declaration of a *tiers saisi*, shall file his contestation within eight days from the making of

the declaration of the *tiers saisi*, if the attachment be an attachment after judgment; and if the attachment be an attachment before judgment, then within eight days from the rendering of the judgment in the original cause.—V. art. 626, C. C. P.

XCIX. That the rules, orders and delays prescribed by law or by this court with respect to pleadings, *enquêtes*, and hearings upon demands in chief, shall be the rules, orders and delays with respect to all pleadings, *enquêtes*, and hearings upon the contestation of the declaration of any *tiers saisi*.—V. art. 627, C. C. P.

#### CHAPTER XVI.

##### INSCRIPTIONS EN FAUX.

C. A party desirous of inscribing *en faux* against an exhibit filed shall, by motion addressed to the court, pray leave so to do.—V. art. 161, C. C. P.

CI. The motion for leave to inscribe *en faux* shall be signed by the party in whose name it is made, or by an attorney specially authorized so to do, and an authenticated copy of the power of attorney given shall be filed with the said motion.—(*Subsequent promulgation, June, 1854.*)—That a motion for leave to inscribe *en faux* against an exhibit filed, shall be made within four days of the filing of the exhibit, and not afterwards, unless allowed on special application for the same.—*Ibid.*.

CII. The party filing such exhibit shall, within a delay to be prescribed by the court, on motion of the plaintiff *en faux*, declare in writing whether he intend to avail himself of such exhibit in support of the allegations set forth in his pleading.—V. art. 165, C. C. P.

CIII. Should the party filing such exhibit omit to make such declaration in writing, signed by himself, or by his attorney *ad lites*, within the time prescribed, the said exhibit shall, by order of the court, on the motion of the plaintiff *en faux*, be taken off the files of the court, and shall thereafter be held and considered to all intents and purposes, to have been withdrawn by the party who filed the same.—V. art. 166, C. C. P.

CIV. If the defendant *en faux* declare that he does not intend to avail himself of such exhibit in support of his allegations, the said exhibit shall be taken off the files of the court, and shall be held and considered, to all intents and purposes, to have been withdrawn by the party who files the same.—*Ibid.*.

CV. If the defendant *en faux* declare his intention to avail himself of such exhibit for the purposes aforesaid, he shall file the minute thereof, if there be a minute, in the office of the prothonotary, within such time as shall be prescribed by the court, and in default of so doing, the said exhibit shall, on motion of the plaintiff *en faux*, be taken off the files of the court, and held and considered,

nents and purposes, to  
been withdrawn by the  
who filed the same.—V.  
, C. C. P.

Two days after the  
f *en faux* shall have  
tified of the filing of the  
nute at the office of the  
rothonotary, the said  
f shall file, under his  
gnature or that of his  
y *ad lites*, his inscrip-  
faux, containing all the  
de faux, a copy whereof  
served on the attorney  
adverse party.—*Altered*  
V. art. 170, C. C. P.  
If the said plaintiff  
to do, the leave granted  
o inscribe *en faux* shall,  
on of the adverse party,  
side, and the plaintiff  
riginal demand allowed  
ed as if leave to in-  
*en faux* had not been

I. When the *moyens de*  
re filed, the defendant  
may move that the said  
be declared irrelevant  
admissible, on which  
it shall be competent to  
rt, if it reject the same,  
re the *moyens de faux*  
t and admissible, and  
the defendant *en faux*  
is plea thereto within a  
elay, to be computed  
e day of the making of  
es-*verbal* next herein-  
entioned.

That immediately after  
lering of the said judg-  
eclaring the *moyens de*  
levant and admissible,  
ntiff or defendant *en*  
ay move that a *procès-*  
descriptive of the ex-

hibit filed, be made in the pre-  
sence of the adverse party, or  
his attorney *ad lites*.

CX. If the defendant *en faux*  
omit to file his plea, as ordered,  
the plaintiff *en faux* shall be  
allowed to proceed *ex parte*.

CXI. The plaintiff *en faux*  
may, within two days from the  
day of the filing of such plea,  
file a special answer thereto, if  
he think fit.

CXII. Either party may  
inscribe the cause on the *roll*  
*d'enquête* for the adduction of  
evidence.

CXIII. The *enquête* being  
closed, either party may in-  
scribe the cause for final hear-  
ing.

CXIV. The cause being in-  
scribed on the *roll d'enquête*,  
and subsequently on the *roll*  
*de droit*, the proceedings there-  
on shall be regulated by the  
orders and rules of practice of  
this court.—V. art. 172, C. C.  
P.

QUEBEC, 17th Dec., 1850.

(Signed,)

ED. BOWEN, Chief Justice, S.C.  
CHS. D. DAY, J. S. C.  
G. VANFELSON, J. S. C.  
CHARLES MONDELET, J. S. C.  
E. BACQUET, J. S. C.  
J. DUVAL, J. S. C.  
W. C. MEREDITH, J. S. C.

*Tariffs in cases under \$200 at*  
*Montreal.*

It is ordered that in all suits  
in which the sum or the value  
of the thing demanded amount  
to or exceeds \$100 but does not  
exceed \$200, to be instituted in  
the Superior Court under the

statute of the Province of Quebec, passed in the thirty-fourth year of Her Majesty's reign, intituled "An Act to amend certain articles of the Code of Civil Procedure, respecting the practice of the Superior and Circuit Courts," the fees to be allowed to the counsel, advocates and attorneys engaged in the said suits and also to the bailiffs employed therein, shall be the same as according to the tariff now in force, are allowed, in actions of the same class in the Circuit Court, which said tariffs, in the particulars aforesaid, are hereby adopted and made tariffs of the Superior Court, applicable to the cases aforesaid.

December, 1870.

*Factums on Jury Trials.*

It is ordered that in all cases in which the fact or facts to be enquired into by a jury, is or are, assigned under the 352nd article of the Code of Civil Procedure, the party making option of a trial by jury do file with his factum or case 25 printed copies of the assignment of facts of which copies the prothonotary or clerk shall distribute twelve copies to the jury, and the expense of printing said assignment shall in the discretion of the Court or Judge form a portion of the costs in the case.

Montreal, 29th April, 1871.

*Cases not to be inscribed till records complete.*

*The prothonotary shall not*

put any case upon the roll for hearing on the merits without having first ascertained whether the record is complete, and for this purpose the inscription must be filed at the prothonotary's office at least one clear day before that fixed for the hearing.

This rule is to be posted in the prothonotary's office.

Montreal, 30th Sept., 1873.

*Stenographers' fees.*

Having taken into consideration the representations made by the Bar in respect to the amount charged by the stenographers employed in this Court. We the undersigned judges of the Superior Court do fix and establish the amount to be paid to said stenographers at the sum of twenty cents per hundred words for the taking of the notes of evidence in cases before said Court.

Montreal, 31st Oct., 1878.

(Signed,) F. G. JOHNSON, J.  
R. MACKAY, J.S.C.  
F. W. TORRANCE, J.  
H. R. RAINVILLE, J.  
A. C. PÂPINEAU, J.  
L. A. JETTE, J.

SITTINGS OF THE SUPERIOR  
COURT AT MONTREAL.

ORDER IN COUNCIL.

Canada	} ED. CARON.
Province of	
Quebec.	

(L. S.) Victoria by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, defender of the Faith, etc.

To all to whom these presents shall come or whom the same may concern.

GREETING :

A PROCLAMATION.

L. Ruggles Church } Whereas  
Sol. Gen. } under the  
authority of chapter seventy-eight of the consolidated statutes for Lower Canada we have thought fit to change the time for holding the superior court, in and for the district of Montreal.

Now know ye, that we have ordered and decreed, and we do hereby order and decree, that the superior court, in and for the district of Montreal, shall from and after the first day of the month of October next, be held at the times hereinafter mentioned to wit: from the sixteenth day of the month of January, to the twentieth day of the month of April; from the first day of May to the thirteenth day of the month of June, and from the first day of the month of September, to the twentieth day of the month of December, these days included.

Of all which our loving subjects, and all others whom these presents may concern, are hereby required to take notice and to govern themselves accordingly.

In testimony whereof, we have caused these our letters to be made patent, and the great seal of our said Province of Quebec to be hereunto affixed, witness, our Trusty and well Beloved the Honorable René Edouard Caron, Lieuten-

ant Governor of our said Province of Quebec.

At our government House in our city of Quebec, in our said Province this ninth day of September, in the year of our Lord one thousand eight hundred and seventy-five, and in the thirty-ninth year of our reign.

(By command,)

C. B. DEBOUCHERVILLE,  
Secretary.

SPECIAL RULES OF PRACTICE FOR  
DISTRICT OF MONTREAL.

1. *The superior court will sit in the first division for hearing causes inscribed for proof and hearing at the same time, every day of term, except the days appointed for sittings in review and the three last juridical days of each month.*

2. *The court will sit at eleven o'clock a.m. in the second division, for the hearing of causes on the merits in cases in which the enquête has been under the old system, every day in term if necessary, except the days appointed for sittings in review, and the three last juridical days of each month.*

3. *The court will sit in the third division in the room near the prothonotary's office for all matters of chambers and practice, but on Saturdays no cases will be heard there except in case of urgency.*

4. *The sittings will commence in the first and third divisions at half past ten o'clock in the forenoon.*

5. *The cases for proof and hearing at the same time will be inscribed for such day as may be fixed by a judge in each case as now practised.*

6. *In the third division (chambers and practice) ordinary chamber matters will be taken at half-past ten a.m. At eleven a.m. the motions of practice (as formerly made in*

*the practice court) will be called; the default and ex parte cases, rules and law hearings; again, after them, ordinary chamber matters until two p.m.*

*Costume will be required in the first and second divisions, but not in the third.*

*Montreal, 30th Sept., 1875.*

# RULES OF PRACTICE

OF THE

## RECURT COURT, PROVINCE OF QUEBEC

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### GENERAL RULES.

That the court be opened at the hour of ten in the forenoon of each juridical day, unless otherwise specially ordered.

[. That the queen's counsellors, barristers, attorneys and clerks of the court be habited in the manner prescribed by the rules of practice of the superior court.

[I. That every attorney at his domicile within one mile from the court house, in default whereof he shall be considered to have elected his domicile at the office of the clerk.—V. arts. 85, 1138, C. C. P.

V. That the office of the clerk, in the districts of Quebec, Montreal, be open, in vacation, from the hour of 8, a.m.

to the hour of 4, p.m.; and during term, from 8, a.m. to 6, p.m. And, in the districts of Three Rivers, Saint Francis, and Gaspé, from 9, a.m. till noon, and from 2 to 4, p.m. in vacation; and during term, from 8, a.m. till 6, p.m.

V. That no attorney or officer of the court be received as bail or security in any cause.

VI. That the clerk shall keep a register of every process *ad respondendum* issuing from this court, specifying the names of the parties, the amount demanded, the cause of action and the day of return.—V. art. 1059, C. C. P.

VII. That in all cases in which the defendant is entitled to a bill of particulars, a copy thereof shall be annexed to the original writ or declaration, and to the copy to be served on



the defendant, and in default thereof, the plaintiff's action shall, on motion of the defendant, be dismissed with costs, *sauf à se pourvoir*.

VIII. That all services on attorneys be made between the hours of nine in the forenoon and six in the afternoon, from the 21st of March to 21st of September, and between the hours of 9, a.m., and 5, p.m., during the remainder of the year.

IX. That no change of attorney be allowed without leave of the court.—V. arts. 200, 1059, C. C. P.

X. That when a party ceases to be represented by attorney, he may, by rule of court, be compelled to name another attorney. In default of a plaintiff so doing, his action shall be dismissed with costs, *sauf à se pourvoir*. If the defendant omit so to do, the plaintiff shall be allowed to proceed as if the defendant had not appeared in the cause.—*Ibid*.

XI. That all exhibits, with a list thereof, be filed with the declaration or plea, as the case may require.—V. arts. 991, *et seq.* and 1059, C. C. P.

XII. That no party shall be bound to file any *acte nous veing privé*, before his *enquête*; but that a certified copy of such document shall be filed with the declaration or plea, as is above directed.—*Ibid*.

XIII. That if a defendant neglect to file his exhibits with his plea, such exhibit shall not be afterwards received or filed, *unless allowed by the court*.—*Ibid*.

XIV. That either of the parties in a cause may take from the clerk's office all exhibits filed, except writings *sous sceing privé*, and the same keep during one day, on signing a receipt for the same on the list filed in the cause.—*Ibid*.

XV. That every *defense au fonds en droit* shall contain an assignment of the causes of demurrer.—V. arts. 147, 1059, pp. 23, 161 *ante*.

XVI. That all incidental cross-demands be filed with the defendant's plea, and that all rules of practice shall apply to incidental cross-demands.—V. arts. 152, 1059, pp. 24, 161 *ante*.

XVII. That every such incidental cross-demand shall be considered a distinct action, and shall not delay the proceedings on the principal demand.—*Ibid*.

XVIII. That every notice of motion or rule *nisi* shall be served one day in term, and two days in vacation, before the party can be called upon to show cause.

XIX. That of all motions for attachments two days' notice shall be given, accompanied by a copy of all affidavits to be filed in support of such motion.

XX. That all papers filed shall be regularly docketed, by specifying the title and number of the cause, describing the paper filed, and stating by whom filed.

XXI. That all applications for security for costs be made on or before the second (now fourth) day after the day of

return.—V. arts. 120, 135, 1059, C. C. P.

XXII. That in computations of time, Sundays and binding holidays—*fêtes d'obligation*—shall not be reckoned, unless otherwise provided by law—(*Code provides that they shall.*)—V. art. 24, C. C. P.

XXIII. That when any delay shall expire on a non-judicial day, such delay shall be held to extend to the close of the next judicial day.—*Ibid.*

XXIV. That the clerk shall not receive or file any pleading or paper-writing, unless the fee allowed thereon be paid.—

XXV. That no *exception déclinatoire*, *péremptoire à la forme*, or *dilatoire* be received unless the party offering such exception shall therewith deposit in the hands of the clerk, the sum of one pound six shillings and eight pence, for every such exception, to answer the costs of the adverse party, if such exception be dismissed or withdrawn, in the proportion of six shillings and eight pence to the clerk, and twenty shillings to the attorney.—V. art. 1059, C. C. P.

XXVI. That every affidavit or certificate of service shall particularly describe the manner, place, and time of service, in letters, and also the distance from the place of service to the court house, at which the party is required to appear.—V. arts. 78, 1059, C. C. P.

XXVII. That it shall be the duty of the clerk to call the causes, each day, in the following order :

1. Causes returned.

2. Non appealable causes fixed for final hearing *exparte*.

3. Non appealable causes in which one of the parties is to be heard on the *serment dérisoire*.

4. Non appealable causes contested.

5. Appealable causes, *ex parte*.

6. Appealable causes contested.

# OF ENQUÊTES.

XXVIII. That the clerk shall keep a roll of all causes inscribed for the adduction of evidence.

XXIX. That of every inscription on the *roll d'enquête* one day's notice shall be given in term, and four days in vacation.—V. art. 1073, C. C. P.

XXX. That if the plaintiff or defendant is not ready to examine his witnesses on the day fixed for the *enquête*, his *enquête* shall, on motion, be declared closed.

XXXI. That every application for an order or a commission, in the nature of a *commission rogatoire*, for the examination of witnesses, be applied for within two (*now four*) days after issue joined.—V. arts. 308 *et seq.* 1059, C. C. P.

XXXII. That all interrogatories annexed to such commission, 'whether for the examination of witnesses or of a party on *faits et articles*, shall be allowed by a judge, before the party can be called upon to answer.—*Ibid.*

XXXIII. That either party may, at any period, cause the

return to a commission by him sued out to be opened, unless good cause to the contrary be shewn. But the return to a commission sued out by a defendant shall not be opened until plaintiff's *enquête* has been closed.—*Ibid.*

#### ROLL DE DROIT.

XXXIV. That the clerk shall keep a roll of all causes inscribed for preliminary hearing *en droit*, and another roll of all causes inscribed for final hearing on the merits.

XXXV. That of all such inscriptions one day's notice shall be given in term and two days in vacation.

XXXVI. That either party may inscribe the cause for final hearing on the merits, or for a preliminary hearing *en droit*.—*All causes are now inscribed at the same time for proof and hearing, and the hearing on the law issue may be reserved till after proof.*—V. arts. 1072 and 1077, C. C. P.

#### OF OPPOSITIONS.

XXXVII. All oppositions shall contain the reasons or *moyens d'opposition*, and none shall be admitted after the filing of any opposition.

XXXVIII. Each opposition *afin d'annuler or de distraire*, shall be supported by an affidavit in the following form :

*Lower Canada,* } CIRCUIT COURT  
*Circuit.* }

A.B. PLAINTIFF;

vs.

C.D. DEFENDANT.

A.B., of—being duly sworn,

doth depose and say, that the facts articulated and set forth in the annexed opposition *ofn d*—and each of them is, and are true, and that the said opposition is not made with any intent unjustly to retard or delay the sale of the whole or any part of the movable or immovable property, seized by virtue of the writ of execution in this cause issued, but that the same is made in good faith, for the sole purpose of obtaining justice.

Sworn before me, at—this—day of—18—.—V. arts. 583, 1089, C. C. P.

XXXIX. No bailiff shall receive any of the oppositions above mentioned, unless supported by such affidavit; but it shall be the duty of the bailiff to proceed as if no such opposition had been presented to him.—*Oppositions to the execution of a writ de bonis, issued from the circuit court, are served upon the bailiff charged with the execution of such writ, by service upon him by a bailiff in the ordinary manner of a true copy of the said opposition.*—C.C.L.C., c. 83, s. 208 § 2.

#### INSCRIPTIONS EN FAUX.

XL. A party desirous of inscribing *en faux* against an exhibit filed, shall, by motion addressed to the court, pray leave so to do.—V. arts. 161, 1059, C. C. P.

XLI. The motion for leave to inscribe *en faux* shall be signed by the party in whose name it is made, or by an attorney specially authorized so

to do, and an authentic copy of the power of attorney given shall be filed with the said motion.—*Ibid.*

XLII. The party filing such exhibit, shall, within the delay to be prescribed by the court, on motion of the plaintiff *en faux*, declare in writing, if he intends to avail himself of such exhibit in support of the allegations set forth in his pleading.—V. arts. 165, 1059, C. C. P.

XLIII. Should the party filing such exhibit omit to make such declaration in writing, signed by himself or by his attorney *ad lites*, within the time prescribed, the said exhibit shall by order of the court, on the motion of the plaintiff *en faux*, be taken off the files of the court, and thereafter be held and considered to all intents and purposes, to have been withdrawn by the party who filed the same.—V. arts. 166, 1059, C. C. P.

XLIV. If the defendant *en faux* declare that he does not intend to avail himself of such exhibit in support of his allegations, the said exhibit shall be taken off the files of the court, and shall be held and considered to all intents and purposes, to have been withdrawn by the party who filed the same.—*Ibid.*

XLV. If the defendant *en faux* declare his intention to avail himself of such exhibit for the purposes aforesaid, he shall file the minute thereof, if there be a minute, in the office of the clerk, within such time as shall be prescribed by the

court, and in default of so doing, the said exhibit shall, on motion of the plaintiff *en faux*, be taken off the files of the court, and held and considered, to all intents and purposes to have been withdrawn by the party who filed the same.—V. arts. 167, 1059, C. C. P.

XLVI. Two days after the plaintiff *en faux* shall have been notified of the filing of the said minute at the office of said clerk, the said plaintiff shall file, under his signature or that of his attorney *ad lites*, his inscription *en faux*, containing all the *moyens de faux*, a copy whereof shall be served on the attorney of the adverse party. If the said plaintiff omit so to do, the leave granted to him to inscribe *en faux* shall, on motion of the adverse party, be set aside, and the plaintiff on the original demand, allowed to proceed as if leave to inscribe *en faux* had not been allowed.—V. arts. 170, 1059, C. C. P.

XLVII. When the *moyens de faux* are filed, the defendant *en faux* may move that the said *moyens* be declared irrelevant and inadmissible—on which motion, it shall be competent for the court, if it reject the same, to declare the *moyens de faux* relevant and admissible, and to order the defendant *en faux* to file his plea thereto, within a given delay to be computed from the day of the making of the *procès-verbal* next hereinafter mentioned.

XLVIII. That immediately after the rendering of the said judgment declaring the *moyens*

*de faux* relevant and admissible, the plaintiff or defendant *en faux* may move that a *procès-verbal*, descriptive of the exhibit filed, be made in the presence of the adverse party, or his attorney *ad lites*.

XLIX. If the defendant *en faux* omit to file his plea, as ordered, the plaintiff *en faux* shall be allowed to proceed *ex parte*.—V. arts. 172, 1059, C. C. P.

L. The plaintiff *en faux* may, within two days from the day of the filing of such plea, file a special answer thereto, if he think fit.—*Ibid*.

LI. Either party may inscribe the cause on the *roll d'enquête* for the adduction of evidence.—*Ibid*.

LII. The *enquête* being closed, either party may inscribe the cause for final hearing.—*Ibid*.

LIII. This cause being inscribed on the *roll d'enquête*, and on the *roll de droit*, the proceedings thereon shall be regulated by the orders and rules of practice of this court.—*Ibid*.

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*The following Rules of Practice shall apply specially to Non-Appearable cases.*

LIV. That the parties shall be bound to proceed to evidence on the day named for that purpose; should the plaintiff not be ready to proceed, his action shall be dismissed with costs, *sauf à se pourvoir*;—in case the defendant is not ready to pro-

ceed the plaintiff shall be allowed to proceed *ex parte*.

LV. The attorneys shall sign all pleadings by them filed—the clerk shall enter on the declaration the name of the defendant's attorney.

LVI. All interrogatories upon the *serment décisoire* or upon *faits et articles* shall be served the day before that on which the party is to answer, when the party to be interrogated does not reside more than five leagues from the court house, and when the said party resides at a distance of more than five leagues from the court house, an additional delay of one day shall be required for every additional five leagues.—But the judge may, in his discretion, allow either party to be interrogated on the *serment décisoire* without requiring the interrogatories to be in writing.

QUEBEC, 17th Dec., 1850.

(Signed),

E. BOWEN, Chief Justice S.C.,  
D. MONDELET, J.S.C.,  
CHS. D. DAY, J.S.C.,  
G. VANFELSON, J.S.C.,  
CHARLES MONDELET, J.S.C.,  
J. SMITH, J.S.C.,  
E. BACQUET, J.S.C.,  
J. DUVAL, J.S.C.,  
W. S. MEREDITH, J.S.C.

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*(Additional rules subsequently promulgated.)*

That within four days after the return of any writ of exe-

, and after the bailiff's thereto, certifying that are moneys in his hands, t to the order of the the clerk shall prepare e a report of distribution. t the clerk shall prepare of all such reports filed, .at such list be posted up ne conspicuous place in ce.

t any party intending to t such report, shall file itegitation at the office of rk, on or before the ex- on of four days next after .ng of such report; Pro- always that, if the report ribution be filed on any lay than a Monday, the for filing the contestation be computed from the y next following the day ch such report shall have iled.

t immediately after the for filing a contestation port of distribution shall xpired, if no contestation en filed, the plaintiff may otice that he will move first juridical day of the ig term, that the said re- homologated with costs; the plaintiff omit to give

such notice on the juridical day next following the expiration of the delay for the filing of contestations, any other party collocated may give such notice.

That the said notice shall not be served on the parties; but that the same shall be posted in the clerk's office, at least four days.

That it shall be lawful for a defendant, by leave of a judge of this court, to pay into court the sum of money which such defendant acknowledges to owe to the plaintiff, and thereupon, unless the plaintiff shall accept thereof in full discharge of his suit, the said sum shall be struck out of the declaration and paid out of court to the plaintiff; and upon the trial of the issue, the plaintiff shall not be allowed to give evidence for the sum so acknowledged to be due.

QUEBEC, Jan. 4th, 1870.

EDWD. BOWEN, Ch. Justice.  
J. DUVAL, J.  
W. C. MEREDITH, J. S. C.  
ED. CARON, J. S. C.  
CHAS. D. DAY, J. S. C.  
CHAS. MONDELET, J. S. C.

**RULES OF PRACTICE**  
**FOR THE**  
**SUPERIOR COURT FOR LOWER CANADA**  
**SITTING AS A COURT OF REVIEW.**

(UNDER THE AUTHORITY OF THE PROVINCIAL STATUTE 27 AND  
28 VIC., CAP. 39), PROMULGATED AT QUEBEC ON THE  
FOURTH DAY OF NOVEMBER, 1865.

---

I. It is ordered that in every case of revision before the said court the party aggrieved shall make and file a statement in writing of the grounds or reasons of revision to be submitted to the said court.

II. The said statement shall be divided into distinct items or articles, each of which shall be regularly numbered in succession, and shall in a summary manner explicitly set out and state each particular ground or reason aforesaid, with the point of law or fact upon which said ground or reason shall rest.

III. The said party may, if he see fit, append to such ground or reason the authorities of law, by reference or at length, relied upon for each such ground or reason.

IV. The said party shall file in each case an original of the said statement, to remain of record therein, and a duplicate thereof, for the use of the said

court, both original and duplicate to be signed by the counsel of the said party aggrieved.

The said original and duplicate shall be produced and filed of record in each case on the day on which the case shall be appointed to be heard, and no hearing shall be allowed or had until the said statement, original and duplicate, shall be so filed. No party shall be heard upon any grounds or reasons of revision other than those set out in the said statement.

(Sgd.)      BADGLEY, J.  
              STUART, J.  
              TASCHEREAU, J.

In every case in revision the prothonotary will be bound to make up a record containing the factums when produced, the judgment under review, and the judgment and proceedings under revision.

October, 1873.

RULES OF PRACTICE  
OF THE  
COURT OF QUEEN'S BENCH  
IN THE  
EXERCISE OF ITS CIVIL APPELLATE JURISDICTION.  
CANADA—PROVINCE OF QUEBEC.

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PROMULGATED JULY TERM, 1850.

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**I.** That this court, in the exercise of its appellate civil jurisdiction, be opened at the hour of ten in the forenoon of each of the juridical days on which the same is by law appointed to be held, unless an order, or adjournment to the contrary be made.

**II.** That the queen's counsel and advocates, practising in this court, and the clerk of the court, when in the discharge of their respective duties in court, be habited in black, and in robes and bands, as heretofore hath been used; and that no queen's counsel, or advocate, not so habited, and in such robes and bands, be heard in any cause.

**III.** That all records, registers, books, and papers, belonging to and filed in the court, be kept in the places assigned for the safe custody thereof, in the court houses respectively, at

the places where this court is by law appointed to be held, and be not then removed, or taken therefrom, on any pretence whatever, without the order of this court, or of one of the judges thereof, in writing. (Judge's order no longer required; see rule of 5th June 1862, *post*.)

**IV.** That the office of the clerk of this court, in what relates to its jurisdiction as a court of appeal and error, be kept in the apartments assigned for it in the court houses respectively, at the places where this court is by law appointed to be held; and that the said office, in the said court houses respectively, during the present and every future term, be open and regular and proper attendance afforded therein, from the hour of nine in the forenoon, until the hour of five in the afternoon of every day,



(sundays and holidays excepted), and during the vacation after each term, from the hour of ten in the forenoon till the hour of three in the afternoon of every day, sundays and holidays excepted.

V. That there shall be prepared and kept, by the said clerk of this court, in what respects its civil appellate jurisdiction in his office, a fit and proper book, in which shall be made the entries herein-after mentioned; that is to say, every attorney of this court, before the first day of September next, shall make in the said book an entry, in writing, and to be signed by him, of his name and of his real and elected domicile, in the cities of Quebec and Montreal respectively, that is to say, of his real domicile in one or other of the said cities, if resident in either of them, and of his elected domicile in that in which he is not resident, or of his elected domicile, in each of the said cities, if not resident in either of them, at which real or elected domicile all pleadings, summonses, rules, orders and notices, of which the service on him may be required, may lawfully be made. And every attorney hereafter to be admitted, shall, on his admission, and before he commences practising in this court, make in the said book a like entry. And as often as any attorney of this court shall change his real or elected domicile, or domiciles, of which an entry shall have been made as aforesaid, he shall make a like entry

of such change; and all pleadings, summonses, rules, orders and notices, which do not require personal service, shall be deemed and taken to be sufficiently served on such attorney, if a copy thereof be left at the place last entered by such attorney as aforesaid, as his real or elected domicile, with any person of competent age and discretion resident at, or belonging to such place. And if any such attorney shall neglect to make such entry as aforesaid, then the fixing up of any notice, pleading, summons, rule or order, for such attorney, in the said office of the said clerk of this court shall be deemed and taken to be service thereof, and as effectual as if the same had been served at such real or elected domicile as aforesaid.—V. art. 1139, C.C.P.

VI. That a schedule of all suits depending in this court, specifying, in each suit, the names of the parties,—the date of the writ of appeal, or of the writ of error,—the time when returned,—or if not returned, the fact of its not being returned,—the names of the attorneys by whom appearances for the parties have been filed,—and the date of such appearance,—and, if not filed, the fact that they have not been filed,—the days on which the reasons of appeal,—and the answers thereto,—and the cases of the parties (if filed) have been filed, and, if not filed, the fact that they have not been filed,—the day on which each suit, if inscribed on the roll for hearing hath been

so inscribed,—and the day which by such inscription is fixed for the hearing of such suit, shall be made and kept by the said clerk of this court, on the first day of the next, and of every succeeding term; and such schedule shall be deemed and taken in all parts to be an official certificate by the said clerk of this court, of the state of such suits, severally and respectively, on the first day of the term, when such schedule shall be laid before the court as aforesaid.

VII. That no writ of appeal or writ of error shall issue from this court, unless a *præcipe* for the same, signed by the attorney suing out such writ, be first delivered to the proper officer, by whom the said writ is to be issued: and every such writ shall be written on parchment and shall bear the signature of the attorney, upon whose *præcipe* the same shall be issued, and shall be made returnable at the place at which this court shall be held next after the issuing of such writ, within fifteen (*now twenty*) days from the date thereof; except such writs of appeal and writs of error, as may be directed to the judge of the superior court for the district of Gaspé, which shall be made returnable within two calendar months from the date thereof.—V. art. 1121, C. C. P.

VIII. That personal service of any writ of appeal, or writ of error, upon the attorney who has appeared in the court below, for the respondent or the defendant in error, as hereto-

fore has been practised, shall in default of the legal service, be held and taken to be legal service.—V. art. 1123, C. C. P.

IX. That the writs, pleadings, motions, and exhibits, and other paper writings, comprising any record to be hereafter transmitted to this court shall, by the prothonotary of the court from which such record proceeds, at the head of each, be separately numbered respectively from number one to the entire number thereof, and that an index of reference to the whole, by number, title, and description, under the signature of such prothonotary, shall be by him annexed to such record.

X. That the postage paid by the said clerk of this court, on the return to writs of appeal and writs of error, and the records accompanying them, shall, on demand, be forthwith reimbursed to him by the attorney of the appellant or plaintiff in error, and, if not so reimbursed, the payment thereof by such attorney may be immediately enforced, by resort to the summary jurisdiction of this court.

XI. That on every writ of appeal, or writ of error hereafter to be issued it shall be incumbent on the appellant and respondent or the plaintiff and defendant in error, respectively, to enter his appearance in the office of the said clerk of this court, on or before the eighth day next after the day on which such writ of appeal, or writ of error, has been made

returnable, and, in default thereof, shall be precluded from entering an appearance in such suit, in which subsequent proceedings may be had *ex parte* against the party so in default as aforesaid.—V. art. 1128, C. C. P.

XII. That the reasons of appeal, or the assignment of errors, as the case may require, in every suit, shall be filed within eight days next after the return of the writ of appeal, or writ of error, as the case may be, and the transmission of the record and proceedings from the court below, and shall contain, specifically the several grounds and reasons of appeal, and the several errors for which the reversal of the judgment appealed from is sought; and if the reasons of appeal, or the assignment of errors be not filed within the time aforesaid, it shall be competent to the attorney of the respondent or defendant in error, by notice in writing under his signature, directed to the attorney of the appellant or plaintiff in error, in such suit, to demand the reasons of appeal or the assignment of errors, as the case may require, and, if the reasons of appeal, or the assignment of errors, be not filed within six days from the service of such notice, every such suit in appeal, or in error, shall be dismissed with costs.—V. art. 1133-7, C. C. P.

XIII. That the answers to reasons of appeal in every suit in appeal, and the joinder in error in every suit in error, shall be filed within eight

days after the filing of the reasons of appeal or the assignment of errors; and if not so filed it shall be competent to the attorney of the appellant or of the plaintiff in error, as the case may be, by notice in writing under his signature, directed to the attorney of the respondent or defendant in error, in such suit, to demand the answers to the reasons of appeal or the joinder in error; and if such answer, or joinder in error, shall not, within four days from the service of such notice, be filed, the respondent or defendant in error as the case may be shall be wholly precluded from filing an answer to the reasons of appeal, or a joinder in error; and the appellant or plaintiff in error may, after notice given to the adverse party of his intention so to do, proceed to a hearing of his suit in appeal or in error *ex parte*, and to judgment therein, without the intervention of the respondent or defendant in error.—V. art. 1136-8, C. C. P.

XIV. That the cases of the appellant and respondent or plaintiff and defendant in error, in every suit in appeal, or error, to the number of ten (now forty, see rule of 21st June, 1879,) on each side, shall be delivered by the appellant and respondent, the plaintiff and defendant in error, respectively to the said clerk of this court, to be by him filed, within ten days after the filing of the answers to the reasons of appeal or the rejoinder in

error. And if the case of the appellant or the plaintiff in error, be not so delivered and filed, the suit in appeal or in error of such appellant or plaintiff in error, shall be deemed to be deserted, and on motion of the respondent or defendant in error, shall be dismissed with costs. And, if the case of the respondent or defendant in error be not delivered and filed as aforesaid, such respondent or defendant in error shall be deemed to have deserted such suit in appeal or error, and the same may be heard *ex parte*, on the part of the appellant or plaintiff in error, and judgment rendered therein, without the intervention of the respondent or defendant in error.—V. art. 1140, C. C. P.

XV. That when and so soon as the answers to the reasons of appeal, or the joinder in error, as the case may require, shall be filed, it shall be competent to either party, by whom cases have been filed, to set down such suit for hearing, by inscribing the same on a docket roll to be kept by the said clerk of this court for that purpose, in vacation or in term, of which inscription two days' notice shall be given to the adverse party.—V. art. 1141, C. C. P.

XVI. That after the inscription of a cause for final hearing, it shall be the duty of the said clerk of this court, without delay, to deliver to the judges, respectively, printed cases, making part of the cases, which have been filed as aforesaid in such case, and furnish the at-

torney of each party, who shall have filed his case, on his demand, with a printed copy of the case of the adverse party; and he shall retain and file of record one of the printed cases of the said parties respectively.

XVII. That it shall be the duty of the said clerk of this court, to prepare and keep a docket roll of the causes which have been inscribed for hearing, in the order in which they have been inscribed; from which docket roll the causes to be heard shall be called on each day, in the order in which they stand on the said roll.

XVIII. That in cases where a suit in appeal or in error, having been inscribed for hearing, and being called from the roll, the appellant and respondent, or the plaintiff and defendant in error, shall not appear, or shall not be ready to proceed, every such suit shall be struck from the roll; and in cases where a suit in appeal, or in error, having been inscribed for hearing, and being called from the roll, the appellant or plaintiff in error, shall not appear, and the respondent or defendant in error shall appear, every such suit shall be dismissed with costs to the respondent or defendant in error; and in cases where a suit in appeal, or in error, having been inscribed for hearing, and being called from the docket roll, the respondent or defendant in error, shall not appear and the appellant or plaintiff in error shall appear, and be ready to proceed, every such suit shall be heard on the part of the ap-

pellant or plaintiff in error, so appearing, *ex parte*, and such order and judgment thereupon made and rendered as to law and justice shall appertain, without costs in such case to the respondent or defendant in error.

XIX. That in all suits which shall hereafter be pending in this court, no more than two counsel shall be heard in opening, or in answer, and one only in reply.

XX. That when this court shall be moved in any suit, upon any special matter, not appearing upon the record or proceedings filed in such suit, such special matter shall be previously authenticated by affidavit; and a copy of the affidavit, and two days' notice of such motion served on the adverse party. And no such motion shall be received, until such affidavit, and an affidavit of the service of notice as aforesaid shall be read and filed.

XXI. That every motion for an appeal from an interlocutory judgment shall be accompanied with copies of such interlocutory judgment and of the pleadings filed in the suit together with copies of such exhibits and proceedings therein, as may be material and necessary in support of any such motion.—V. art. 1119, C. C. P.

XXII. That a copy of every judgment of this court, by reason whereof the record in any suit in this court shall be remitted to the court below shall be annexed to the record, and transmitted with the same,

under the certificate of the said clerk of this court.

XXIII. That in the computation of time, the common rule *dies a quo non computatur termino* shall be observed; and in all cases in which a prescribed delay or period, within which something is required to be done, shall expire on a Sunday or holyday the same shall *ipso jure* stand and be enlarged to the then next juridical day.—V. art. 24, C. C. P.

XXIV. That all rules and orders heretofore made for regulating the practice in appeal, and in error, and now in force in this court, be, and the same are hereby rescinded and annulled.

QUEBEC, 12th July, 1850.

(Signed),

J. STUART, C.J.,  
J. R. ROLLAND, J.B.R.,  
PHI. PANET, J.B.R.,  
T. C. AYLWIN, J.

#### SUPPLEMENTARY RULES.

*Records to have parchment covers.*

Experience having shewn that the paper covers, heretofore in use, are insufficient to protect the records of the court from injury, it is hereby ordered, pursuant to the statute in that behalf, that for the future the clerk do provide proper wrappers, or external covers, in parchment, for each record; and to defray the expense thereof the sum of one shilling and threepence shall

be paid to him, over and above the other sums now payable upon the suing out of any writ of appeal.

July 11th, 1857.

*Number of factums to be filed.*

It is further ordered, that instead of the present number, for the future there be filed in the office of the clerk twenty-five (now forty; see rule of 21st June 1879, p. 269 *post*.) printed copies of cases, on each side, in appeal; and that the said cases be printed, as heretofore, on paper in folio form, (now on paper 11 inches high by 8½ inches wide; see rule of 21st June 1879, p. 269 *post*.)

October 12th, 1857.

*No fees payable on extra number of factums.*

Doubts having arisen, whether the additional number of cases in appeal, made requisite by the rule of the 11th July last, should be liable to the payment of any fee or charge, it is hereby ordered that no fee or charge whatever shall be demanded or paid, in respect of such additional cases.

*Printed Factums to be produced in appeals from Circuit Court*

1. That for the future, in appeals from the circuit court, the parties shall each produce a printed factum, in the same manner, within the same delay, and subject to the same penalties as are prescribed and established by the rule concerning appeals from the superior

court; and the party appellant will not, for the future, be obliged to furnish copies of his petition in appeal.

*Evidence to be printed*

2. That for the future, in every appeal, as well from the superior as from the circuit court, the evidence taken in the suit is to be printed, and to form part of the factum; that is to say, that the appellant shall have printed, with his factum, the evidence adduced by him in the court of original jurisdiction, and the respondent that adduced by him.

December, 6th, 1859.

*Copy of Judgment appealed from to be inserted in Appellant's factum.*

It is ordered that the appellant, in each cause, shall insert in his factum, a true copy of the judgment appealed from, and both parties, appellant and respondent, shall endorse on the said factum the name of the court from whose judgment the appeal has been instituted.

December 9th, 1861.

*Parties to have communication of records.*

It is ordered that, hereafter, communication of the record, in each cause, be given to the attorney of either party, on his receipt, filed with the clerk of the court; and that the order of this court, or one of the judges thereof, required by the third rule of practice, be dispensed with.

June 5th, 1862.

*Clerk to furnish Judges with list of appeals to the Privy Council.*

It is ordered that at the expiration of each term the clerk of this court do give each judge a list of the cases in which an appeal has been allowed to her majesty in her privy council.

That immediately on the transcript of the record being transmitted to the first clerk of the privy council, the clerk of this court shall inform each judge thereof.

*June 4th, 1864.*

*Ejectment cases to be heard by privilege.*

It is ordered, that appeals from judgments in actions of ejectment, brought under the lessors and lessees' act, shall, as to hearing, have precedence in this court before other cases.

*March 9th, 1865.*

*No barrister or officer of the Court may become surety.*

It is ordered that no barrister, attorney, prothonotary, sheriff, crier, bailiff, sheriff's officer, or officer of this court, shall be bail or surety in any action or proceeding cognizable by this court, or by any judge thereof.

*June 9th, 1865.*

*Case reserved for opinion of Court to be set down for hearing on receipt of papers.*

It is ordered, that the clerk of this court, immediately upon

the receipt of the papers transmitted in a case reserved for the opinion of the court, shall set down such case for hearing on the first juridical day of the then next ensuing term.

*Writs of Error.*

It is ordered that the plaintiff in error, in all criminal cases, shall file an assignment of errors on the first juridical day after the lay of the return of the said writ.

That the joinder in error shall be filed on the first juridical day following the filing of the assignment of errors.

That the clerk of this court, on receiving the joinder in error, shall forthwith set down the cause to be heard on the errors assigned.

*June 1st, 1867.*

*Deserted Cases.*

On the first day of each term, the clerk of appeals shall lay before the court a list of all cases pending before the court, in which no proceedings have been had for more than a year, indicating the name of the parties and of their respective counsel, the nature and date of the last proceeding had in such case; and such cases shall be considered to have been deserted, and the court may, without any demand to that effect, order the records to be transmitted to the court below.

This rule is to be enforced in cases now pending as well as in future cases, from and after the first day of March, 1873.

*Joint Special Case may be filed.*

In all cases of appeal and error, the parties may in lieu of factums as now required, file a special case setting forth the judgment or judgments appealed from, and so much of the pleadings, evidence, documents and orders in the cause as they may deem necessary to enable the court to decide the questions at issue, together with such propositions of law or fact as may be relied upon by the parties respectively, and such special case shall be considered as common to both parties, and will entitle the counsel engaged in the case to the same fees as if separate factums had been filed.

*Size of factums.*

The cases or factums shall be printed on paper of eleven inches by eight inches and a half, the type to be small pica, leaded face, and every tenth line numbered in the margin. (Certified.)

L. W. MARCHAND,  
Clerk of appeals.  
March 16th, 1877.

*Factums—what they must contain.*

1. The case in appeal shall contain a summary statement of the pleadings and of the questions of fact and of law on which the party filing it relies, also in an appendix copy of the depositions of the witnesses produced by such party, giving the date of each

deposition, also copies of all admissions obtained by him and of all questions put to and answers on *faits et articles* by the adverse party whenever the same are relied upon.

2. In addition the appellant's case shall contain a copy of the judgment or judgments appealed from with their respective dates; and such judgment or judgments shall appear at the beginning of the appellant's case.

3. There shall also be an index of the printed matter sent up by each party indicating the page of the case on which each document or paper begins.

*Size of Factums.*

4. The case shall be printed on paper of eleven inches by eight inches and a half, the type to be small pica, leaded face, and every tenth line numbered in the margin.

*Joint Cases.*

5. The parties may by a consent in writing file a joint case or factum.

6. Such joint case or factum shall state the questions of fact and of law to be determined by the Court, with a reference to such portions of the depositions, admissions, and questions and answers on *faits et articles* to be printed in an appendix as are required for the proper adjudication of the questions in issue between the parties.

7. Such joint case shall be in the same form, and in other



respects be subject to the same rules and will entitle the parties to it to the same fees as if separate cases had been filed.

*Number of cases to be filed.*

8. Forty copies of each case or of the joint case shall be filed in each cause.

*Clerk not to receive factums not conforming to rules.*

9. No case not in conformity to the above rules shall be received by the clerk of this court or filed in his office, nor shall it be taxed against the adverse party except by leave of the court or of a judge thereof, which may be granted on such terms and conditions

as the court or judge shall direct.

*Delay within which factums must be filed.*

10. No party shall be heard on the merits unless his case or factum shall have been filed at least forty-eight hours before the case is called for hearing.

11. The above rules shall take effect as to all cases filed from and after the tenth day of September next, from which date all other rules of practice on the subjects provided for by the present rules shall be held to be revoked.

L. W. MARCHAND,

Clerk of appeals.

June 21st, 1879.

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COURT OF VICE-ADMIRALTY.

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## AN ACT

FOR THE BETTER ADMINISTRATION OF JUSTICE IN HIS MAJESTY'S  
PRIVY COUNCIL

(3 and 4 William IV., c. 41.)

II. And be it further enacted, that from and after the first day of June, 1833, all appeals or applications in prize suits, and in all other suits or proceedings in the courts of admiralty, or vice-admiralty courts, or any other court in the plantations in America, and other his majesty's dominions or elsewhere abroad, which may now, by virtue of any law, statute, commission, or usage, be made to the high court of admiralty in England, or the lords commissioners in prize cases, shall be made to his majesty in council, and

not to the said high court of admiralty in England, or to such commissioners as aforesaid; and such appeals shall be made in the same manner and form, and within such time wherein such appeal might, if this act had not been passed, have been made to the said high court of admiralty, or to the lords commissioners in prize cases respectively; and that all laws or statutes now in force with respect to any such appeals or applications shall apply to any appeals to be made in pursuance of this act to his majesty in council.

## AN ACT

TO REGULATE THE PRACTICE AND THE FEES IN THE VICE-ADMIRALTY  
COURTS ABROAD, AND TO OBVIATE DOUBTS AS TO  
THEIR JURISDICTION.

23rd June, 1832.

2 Will. IV., c. 41.

WHEREAS it is expedient that provision should be made for the regulation of the practice to be observed in the suits and proceedings in the courts of vice-admiralty in his majesty's possessions abroad, and for the establishment of

fees to be allowed and taken in the said courts by the respective judges, officers, and practitioners therein: Be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall be lawful for his majesty, with the advice of his privy council, from time to time to make and ordain such rules and regulations as shall be deemed expedient touching the practice to be observed in suits and proceedings in the several courts of vice-admiralty at present or hereafter to be established in any of his majesty's possessions abroad; and likewise from time to time to make, ordain, and establish tables of fees to be taken or received by the judges, officers, and practitioners in the said courts, for all acts to be done therein; and also from time to time, as shall be found expedient, to alter any such rules, regulations, and fees, and to make any new regulations and table or tables of fees; and that all such rules, regulations, and fees, after the same shall have been so made and established or altered, from time to time, be entered or enrolled in the public books or records of the said courts, so far as such practice and fees shall relate or apply to each of such courts respectively.

II. And be it further enacted, that a copy of every table of fees so to be from time to time made and established or

altered, shall be laid before the house of commons within three calendar months next after the making and establishment or alteration thereof respectively, if parliament shall be then sitting, and if not, then within one calendar month next after the subsequent meeting of parliament.

III. And be it further enacted, that the several fees so to be established, and no other, shall, from and after the making and establishment thereof, and the entry and enrolment thereof as aforesaid, be deemed and taken to be the lawful fees of the several judges, officers, ministers, and practitioners of the said respective courts; and such fees only shall and may be demanded, received and taken accordingly.

IV. And to the intent that all such regulations and fees may be promulgated and publicly made known, be it further enacted, that the judge and registrar of every such court shall cause to be kept constantly hung up and preserved in some conspicuous part of every such court, and in the office of the registrar, a copy of the table of fees so to be from time to time ordained and established in such courts respectively, so that the said table may be seen and read by all persons having any business in any such court and office respectively; and that the books or records containing the entries of the said regulations and tables of fees, as the same shall be in force, shall be at all seasonable times

open to the inspection of the practitioners and suitors in every such court.

V. And be it further enacted, that in all cases in which proceedings may be had in any of the said vice-admiralty courts, if any person shall feel himself aggrieved by the charges made by any of the officers or practitioners therein, and the allowance thereof by such vice-admiralty court, by reason that such charges are not warranted by the tables herein-before mentioned, it shall be lawful for such person or his agent, under the regulations to be established in pursuance of the powers given by this act, by summary application to the high court of admiralty to have the said charges taxed by the authority thereof.

VI. And whereas in certain cases doubts may arise as to

the jurisdiction of vice-admiralty courts in his majesty's possessions abroad, with respect to suits for seamen's wages, pilotage, bottomry, damage to a ship by collision, contempt in breach of the regulations and instructions relating to his majesty's service at sea, salvage, and droits of admiralty; be it therefore enacted, that in all cases where a ship or vessel, or the master thereof, shall come within the local limits of any vice-admiralty court, it shall be lawful for any person to commence proceedings in any of the suits herein-before mentioned in such vice-admiralty court, notwithstanding the cause of action may have arisen out of the local limits of such court, and to carry on the same in the same manner as if the cause of action had arisen within the said limits.

# RULES AND REGULATIONS

TO BE OBSERVED IN THE SEVERAL

## COURTS OF VICE-ADMIRALTY.

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§ 1. As to the holding of Courts.—§ 2. Surrogates.—§ 3. Registrar and Marshal to be sworn.—§ 4. Registry Office.—§ 5. Registrar's Duties.—§ 6. Marshal's Duties.—§ 7. Proceedings by Action.—§ 8. Execution of Warrants.—§ 9. Appearance and Bail.—§ 10. Proceedings by Default.—§ 11. Contested Suits.—§ 12. Proceedings by Plea and Proof.—§ 13. Examination of Witnesses.—§ 14. Proceeding by Action on Petition.—§ 15. Suits for Mariner's Wages.—§ 16. Suit for Pilotage.—§ 17. Suits for Bottomry.—§ 18. Causes of Damage by Collision.—§ 19. Suits for Salvage.—§ 20. Causes of Possession.—§ 21. Action to obtain Security for the Safe Return of a Vessel.—§ 22. Derelict Cases.—Sections 23, 24, 25, and 26, relating to Pirates, have been omitted.—§ 27. Prosecutions for Breach of the Revenue Navigation Laws.—§ 28. General Rules to be observed in Practice.—§ 29. Tender.—§ 30. References.—§ 31. Taxation of Costs.—§ 32. Incidental Monitions.—§ 33. Commotions.—§ 34. Acts on Petition.—§ 35. Appeals.—§ 36. Regulations as to the Sittings of the Court.—§ 37. As to the Return and service of Warrants, Monitions, and other Instruments.—§ 38. Interlocutory Decree.—§ 39. Monition.—§ 40. Proxies.—§ 41. Other General Rules.

§ 1. *As to the holding of Courts.*

Courts are to be regularly held at short intervals by adjournment from day to day; but the judge is authorized to sit on any intermediate day as herein-after provided, in case the despatch of business, or

other necessity shall require. The practice which has prevailed in many of the vice admiralty courts, of presenting a petition to the judge to appoint a day for holding a court is from henceforth to cease.

The judge is to be at convenient times accessible at his

chambers, that he may be, if necessary, consulted by the registrar on any incidental matter, or for the purpose of hearing a motion by counsel, or directing the sale of perishable goods, or doing any other act which the emergency of a case may render requisite to be done.

§ 2. *Surrogates.*

The admitted advocates of each court are to be appointed surrogates, to do, in the absence of the judge, ordinary, or common form acts (but none other), such as the administering an oath to a witness, decreeing a monition, taking bail, and the like; but in those courts in which the advocate is allowed to act as proctor also, no judicial act of any kind is to be sped by a practitioner in any cause in which he may be professionally retained or interested.

When an advocate is to be admitted a surrogate, he is to attend with the registrar before the judge, and, on being sworn faithfully to execute his office, is to be admitted. The registrar is then to make an entry of such admission in the minute or assignation book, and attest the same.

§ 3. *Registrar and Marshal to be sworn*

The persons to be appointed to execute the several offices of registrar and marshal are to be sworn faithfully to perform their respective duties.

§ 4. *Registry Office.*

The registry of the court is to be accessible to suitors at convenient hours in the day throughout the year; and a person of competent skill and knowledge is to be in regular attendance there, for all requisite purposes.

§ 5. *Registrar's Duties.*

The duty of the registrar is to attend all sittings of the court, and also before the judge, or surrogate in chambers, and to make minutes of every act of court or decree, and to enter the same in an assignation book, to be kept for the purpose, which is to form a record of the proceedings of the court; he is to file or take the custody of all pleas, depositions, documents, exhibits, and papers brought into court, recording the receipt thereof in the assignation book, briefly stating the papers so received, and the date of their receipt. He is to take the depositions of all witnesses examined upon pleas and interrogatories. If from illness, or any other sufficient cause, he should be unable to perform this duty, he may, with the consent of the judge, appoint some other competent person to act for him on those occasions. He is to make, or procure to be made, translations of such documents in foreign languages brought into court as may be required by the judge, or by the proctor of either party. He is to make and to attest copies



of all records, documents, and papers that may be requisite. He is to draw all bail-bonds, or recognizances, and to be present at and attest the execution thereof before the judge or surrogate. He is to prepare, sign, and seal all warrants, commissions, and instruments issuing under the seal of the court. He is also to collect from the practitioners, and receive for the judge's use, the fees payable to him. He is to have the custody of all moneys paid into court, and to remit them when required, by bills of exchange or other valid securities, to England. He is prohibited from acting either as advocate or proctor in any suit, matter, or proceeding in the court of which he is a registrar.

#### § 6. *Marshal's Duties.*

The marshal is to attend the judge in court on all court-days. He is to enquire and report as to the sufficiency of persons proposed for bail. He is to execute all such warrants, decrees, monitions, and other instruments as shall be issued from the court, and be directed to him; and he is to make due returns thereof.

In cases where, in order to avoid expense, it may be deemed requisite to employ others than the marshal to execute the process at any great distance from the court, the instrument is to be addressed as follows:—

“To all and singular mayors, justices of the peace, bailiffs,

constables, officers, and ministers of justice, or literate persons whomsoever, and more especially to the collector and comptroller of our customs at the port of—;” or in some similar form, if more appropriate to the existing authorities in the colony.

And on those occasions either the collector or comptroller of the customs is to be preferred, unless they are parties to, or interested in, the suit.

And, with the same view of avoiding expense, it is expedient that other duties which properly belong to the office of marshal, and which require to be performed at a distance from the court, be executed by others; in which cases, commissions are to be addressed specially to any competent persons, by name, resident near the place where such duties are to be performed.

#### § 7. *Proceedings by Actions.*

These are to commence with an entry by a proctor, in a book to be kept in the registry for that purpose, called the action book, of the action in a given sum sufficient to cover the demand and the probable amount of costs; but this sum is on no account to be excessive. Before any warrant is issued, the party applying for the same is to exhibit to the registrar an affidavit, setting forth the nature of the demand, that application for payment has been made without effect to the parties concerned, and that the aid and process of the

court are required for the enforcement thereof. Upon the leaving of this affidavit in the registry, a warrant, specifying the amount of the action, may issue to arrest the property proceeded against, or the person in cases where personal arrest is lawful; but personal arrest is never to be resorted to when the ends of justice can be otherwise obtained. The proctor, having obtained the warrant from the registrar, is to make a copy of it, and then deliver the warrant and copy to the marshal, with instructions for the execution of the process. If the instrument is to be served on a ship, cargo, and freight at different places, as many different copies thereof as are requisite, must be made by the proctor for that purpose. Every copy is to be examined with the original by the marshal, or the person serving the instrument.

§ 8. *Execution of Warrants.*

When a ship is, or a ship and cargo are, to be arrested, the warrant is to be affixed on the mainmast or some conspicuous part of the vessel for a short time, and a collated copy of it left on board; and when goods only are to be arrested (either for the purpose of proceeding against such goods or the freight due thereon,) the warrant is to be affixed for a short time on part of the goods, and a collated copy thereof left thereon, or with any person in whose actual custody the goods may be.

In cases of personal arrest, the warrant under the seal of the court must be shown to the party before he is taken into custody.

A certificate of the service of every warrant executed by the marshal is to be endorsed thereon, and signed by him, in which he is to set forth the time when, and the mode by which the service was effected.

When a warrant is served by any other person than the marshal, there must be, in addition to a similar certificate of the person serving it, his affidavit, in the verification thereof.

The warrant having been served is to be delivered back to the proctor, to be by him returned into the registry at the time when it purports to be returnable; and the registrar is then to attend with the proctor before a judge or surrogate, and enter a minute in the assignment book, that the warrant has been returned duly served and executed.

§ 9. *Appearance and Bail.*

After the entry of an action, and before the issue of a warrant, the defendant may voluntarily appear and give bail, and thus avoid the expense consequent on the issue of process.

An appearance alone, without any bail, may be sufficient for the purpose of contesting a suit, but in cases of the arrest of property or of the person, either the demand must be satisfied, or competent bail given before the property or

person is released from the arrest.

In order to avoid unnecessary detention when the arrest is to take place at a distance from the court, a commission for taking bail is to accompany the warrant, as an authority to the party serving the warrant to release the individual or the property on sufficient bail being given.

§ 10. *Proceeding by Default.*

In the case of property arrested, and no party appearing after the return of the warrant, the cause may proceed by default, or *penam contumacie*. To this end, on the day the warrant is returned, the parties cited and not appearing, are, at the petition of the proctor, to be pronounced by the judge or surrogate to be in default, and an entry to that effect is to be added by the registrar to the minute on the return of the warrant in the assignation book.

At the expiration of two months from the return of the warrant, if no appearance be given, the parties cited are again to be pronounced in default, and the promoter is to be entitled to a decree pronouncing for the amount of his demand, and giving him a lien on the property; which decree is to be drawn by the proctor, who, after it has been perused and settled by the registrar, is to make a fair copy of it for the court.

An affidavit in verification of *all the facts* mentioned in the

decree is to be made by the party proceeding, which affidavit is to be drawn by the proctor, and submitted to the registrar.

The proctor is then to prepare a short case detailing the proceedings, which, with a copy of the affidavit, he is to deliver to counsel as instructions to move the court to sign the decree, of which, when signed by the judge, the registrar is to make a minute in the assignation book.

On the same court day, or on any subsequent adjourned court day, if an affidavit of two persons is exhibited, stating that the property proceeded against is perishable and likely to deteriorate in value, the judge is to direct a decree of appraisement and sale to issue, of which the registrar is also to make an entry. This decree is then to be delivered by the registrar to the proctor, and by the latter to the marshal, with instructions for its execution. The marshal is thereupon to select a broker, or other person conversant with the value of the property, and to administer an oath to him justly and faithfully to inventory and appraise the ship, her tackle, apparel, and furniture, or the goods, as the case may be. An inventory and appraisement are then to be made, and the marshal is to cause the property to be publicly advertised by printed bills or otherwise, and, after sufficient public notice of the intended sale, to be sold by auction. The sale

being completed, the marshal is to return the decree (with his certificate as to the execution thereof) into the court, or before the judge or surrogate in chambers, and to bring in at the same time the inventory and appraisement, with a more extended return of the marshal and appraiser, signed by them, setting forth the particulars and the value of the ship or goods as appraised; and he is also to bring the account of sales and proceeds into the registry within the time specified in the decree.

If the property be of considerable value, two brokers or appraisers may be employed, provided there is sufficient reason for the same. The property is never to be sold under the appraised value, unless by special order of the court; and if the appraised value cannot be obtained after an attempt to sell, the marshal is to exhibit an affidavit of at least two persons, stating that the property had been duly advertised and put up at public auction, when only a certain sum was bid for the same. And if the judge be then satisfied that all has been done as properly and fairly as if the owner himself had been selling his own property, he is to direct the same to be sold at a reduced price, but not for less than a sum which he in his discretion is to fix. A minute of such order is to be entered by the registrar in the assignment book, and the property is then to be offered again for sale by public auction.

When the proceeds are brought into the registrar, the registrar may pay out of court to the party proceeding, on his application for that purpose, the amount of the debt pronounced for, together with the costs of the suit, the same being first duly taxed and allowed by the judge.

When a decree pronouncing for the interest of a party proceeding by default has been signed by the judge, if any other party should also proceed against the property, he will be entitled on a motion of counsel, to have his interest pronounced for by an interlocutory decree, after the warrant has been returned two months, and a second default has been incurred in his particular suit. On this occasion a similar affidavit must be exhibited to that required on obtaining the decree for the interest of the party who had originally proceeded by default.

The balance of proceeds, if any remain in the registry after satisfying the amount pronounced for and costs, may, on production of the ship's register, or other satisfactory evidence of ownership, be paid out to the owner. But if his application be made within a year and a day from the return of the warrant, he is to give bail to answer latent demands.

The sufficiency of sureties is to be reported upon by the marshal, and the bail must be given in the manner herein-after mentioned respecting bail to answer an action in a contested suit.

In a case proceeding by default or *in penam*, the owners of the property are to be allowed to contest the suit at any time before the expiration of a year and a day from the return of the warrant; but if they neglect to appear until they have been pronounced in default, they must, on appearing, pay contumacy fees, viz. all the costs occasioned by such their neglect, including the charges for keeping possession beyond the time specified in the warrant for its return, which costs are to be taxed by the court.

#### § 11. *Contested Suits.*

In contested suits the property remains in the custody of the court, but if the release thereof be a material object to the owner, or to the party defendant, it may be delivered to him on sufficient bail by two persons severally in the amount for which the action has been entered. Causes of possession, however, are not bailable unless by the special direction of the judge. Bail to answer an action, and all bail bonds or recognizances are to be given in the following manner:

The proctor who is to produce the sureties is to furnish the marshal and also the adverse proctor with the particulars in writing, of the names of the proposed bail, their address and occupation; and the marshal, having made due enquiry as to their sufficiency, is to deliver his report thereon to the proctor proposing the bail,

who is then to instruct the registrar to prepare the bail-bond. The registrar, the two proctors, and their sureties, are then to attend the judge or surrogate, and, upon the recognizances being duly entered into, the property is to be released upon an instrument to be drawn by the marshal and issued immediately after bail has been given. This form is to be dispensed with when the bail is taken by commission.

It is competent to the adverse proctor to object to the proposed sureties, in which case the judge is immediately to decide on the validity of the objections. If the adverse proctor do not attend at the production of the sureties, the bail may be taken *ex parte* upon an affidavit, to be prepared by the proctor producing them, that he has given twenty-four hours'\* notice in writing of their names, address, and occupation, which affidavit is to be left in the registry.

Should a party appear under protest, either objecting to the jurisdiction of the court, or on any other ground on which he means to contend that he is not liable to answer the action, his appearance must be entered by the registrar in the assignation book as given under protest, and the party so appearing is to be assigned to deliver his act on protest to the adverse proctor within a limited time. The same course of proceeding is to be pursued on the act on

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\*See Supplementary Rules of 2nd March, 1848, *post*.

protest as in cases of acts on petition (hereinafter stated) up to the time of the hearing, when the judge is either to pronounce for the protest and dismiss the suit, or overrule the protest and assign the party to appear absolutely, and the cause is then to proceed as if no appearance on protest had been given.

In contested suits the facts may be established either by libel or plea, and the examination of witnesses thereon styled "Plea and Proof;" or by an "Act on Petition," supported by affidavits, to which may be annexed exhibits or other documents to be verified in the affidavits.

§ 12. *Proceedings by Plea and Proof.*

When an appearance has been entered, the defendant is entitled to an assignation on the plaintiff to exhibit a libel within a time to be limited by the judge.

The libel or plea is to be drawn by the plaintiff's proctor and settled by counsel, and then a fair copy, signed by counsel, is to be made for the court, and brought in pursuant to the assignation; a copy is also to be delivered to the adverse proctor, and each proctor is entitled to make copies for the use of his counsel at the hearing.

There may be annexed to the libel or plea, documents or exhibits pleaded or referred to therein, of which copies are to be made in like manner, the originals being brought into

court. And upon the libel or plea being brought in, the judge is to assign to hear, on admission thereof, on the next court-day, or at a time to be named by him. The defendant's proctor may then lay the libel or plea before counsel for his advice, if the same be opposable, and if it be deemed by him not sufficient in law (supposing it be true) to warrant the plaintiff's prayer, the admission of it may be opposed; whereby if the plaintiff has no legal cause of action, the suit may be stopped *in limine*, it being the duty of the judge to reject all pleas, which, if assumed to be true, will not justify him in pronouncing a decree for the party giving in such plea. Or if the plea contains matter unnecessary or irrelevant to the cause of action, or is drawn in too diffuse or argumentative a manner, the admission thereof may be opposed. Upon these objections coming on to be debated, the judge will order the plea to be admitted, reformed, or altogether rejected as he shall see cause. If ordered to be reformed, the judge will in his discretion direct the objectionable matter to be expunged and other points modified. If ordered to be rejected, such rejection puts an end to the suit.

On the libel being debated, a case on each side is to be prepared by the respective proctors, and delivered to counsel with copies of the libel and of the exhibits if any, which copies, however, must afterwards serve for the use of the counsel at the final hearing.

Pleas, the admissibility of which is not objected to, are admitted to proof of course.

Pleas or allegations given in a subsequent stage of a cause, may be admitted, reformed, or rejected in a similar manner.

On the libel being admitted, the proctor giving in the same is to be assigned to prove its contents by evidence within a time to be limited by the judge, and the party giving in the plea is entitled, if he desires it, to the personal answers in writing of the adverse party. In that case a decree for answers is to be extracted from registry and served on the party, by showing him the original under seal, and leaving with him a copy thereof. The answers are to be drawn by the proctor for the party required to give in the same, who must answer specifically to all the facts or allegations in the plea which are within his own knowledge, by either admitting or denying the same; and as to all matters, he must answer to his belief or disbelief.

No extraneous or irrelevant matter is to be introduced, but the party may set forth any matter necessary to explain his answer. If any facts are introduced which are capable of proof by witnesses, they must be established by evidence regularly taken on a plea. The answers are to be settled by counsel, and then the party attended by his proctor is to be sworn to the truth thereof before the judge or surrogate in the presence of the registrar, *who is to make and sign an*

attestation at the foot thereof. The registrar is then to file them and make a minute in the assignation book, of their having been sworn and brought into court. The adverse proctor may immediately inspect them without waiting for publication, and may have an office copy of them. And if they be insufficient, redundant, or contain matter not pertinent, may be objected to in the same manner as a libel or plea.

If after the return of a decree personally served, the party does not give in his answer within the time assigned, the judge may decree an attachment against him for his contumacy; but notwithstanding this measure, the proctor for the plaintiff may proceed with the production of his witnesses and take other requisite steps in the cause.

### § 13. *Examination of Witnesses.*

The name of the witness and a designation of the specific articles of the libel or plea on which he is to be examined, must be delivered to the adverse proctor and to the registrar or examiner, whereupon the proctor giving in the plea is to attend the witness and produce him before the judge or surrogate, in court or chambers, when the witness is to be immediately sworn in the presence of the registrar. Due notice of his intended production must be given to the adverse proctor, who may attend if he think fit. On the witness being so sworn, the registrar is

to make an entry thereof in the assignation book.

The deposition in chief is not to be taken upon written interrogatories, but by relevant questions put *vidæ voce* by the registrar or examiner, and arising out of the circumstances pleaded, but not so put as to lead the witness. If there are several pleas, witnesses are to be examined on each plea. The witness must not be dismissed until the lapse of twenty-four hours from the time of his production, so that the adverse proctor may have an opportunity to cross-examine him by interrogatories in writing if he think fit; and this time may be extended on reasonable cause to be shown by the proctor through the registrar to the judge. Such interrogatories are to be drawn by the adverse proctor, and, when practicable, settled by counsel. They are then to be copied for and signed by the counsel, and delivered to the registrar, with instructions as to the particular interrogatories to be administered to each witness. When the witness has been examined in chief, and also upon interrogatories, if any are to be administered, the depositions in chief and also the answers to the interrogatories (if any), are to be read over to or by the witness and signed by him, and he is then to attend with the registrar before the judge or surrogate in chambers, and make a declaration that he knows the contents of his deposition, and that the same are true in virtue of the oath by him

taken on his being produced; and an attestation thereof is to be made at the foot of the deposition by the registrar or examiner.

The evidence of the witnesses is in all cases to be kept closely sealed, and the contents thereof are not to be divulged until publication shall have been passed; after which, but not sooner, the proctor administering the interrogatories, if any are administered, is to deliver a copy thereof to the proctor producing the witness.

In the event of any witness refusing to attend to be examined, his necessary expenses having been tendered to him (but not otherwise,) a compulsory or subpoena, to be prepared by the registrar, may be extracted, and served on the person so refusing to attend, by showing to him the original instrument under seal, and leaving with him a collated copy thereof, and if he do not appear to this process, an attachment may issue against him for his contempt.

The witnesses for the plaintiff being all examined, his proctor may on the first court-day afterwards pray publication of the evidence, which is to be decreed to take place at a time to be fixed by the judge; and at the expiration of that time it is imperative on the opposite party to plead if he intends to do so at all; for this purpose, he is to attend before the registrar or surrogate, and declare in a minute of court that he intends to offer an allegation or counter-plea, and the



same must be brought into court within a reasonable time, to be assigned by the judge. In that case, publication of the evidence must be stayed until the allegation be disposed of, either by being admitted or rejected by the court, or by the party abandoning the intention of giving it in. If admitted, publication must be stayed until the whole evidence in the cause be taken. In the event of no allegation or counter-plea being given, or, if given, being rejected by the court, or withdrawn by the party, publication of the evidence is to take place; and thereupon the depositions may be inspected on each side, and copies thereof furnished to the parties at the request of their proctors, who may make copies thereof for their respective counsel.

After the evidence has been inspected, neither party can claim as a matter of right to give any further plea or allegation in the principal cause; but if the judge shall be satisfied by affidavit that there is any matter important to the issue, which could not have been pleaded before by reason that knowledge thereof had not come to the party prior to, or that the fact had occurred after the publication, the judge in his discretion may allow such matter to be pleaded.

Allegations exceptive to the testimony of witnesses, may be given after publication in cases only where the matter on which they are founded, arises out of the evidence of the witness or *witnesses* excepted to, and

where the contradiction, if proved, would tend materially to destroy his or their credit; but no allegation exceptive to the testimony of witnesses is to be admitted, if the facts it contains either have been or could have been pleaded before publication. After publication, no allegation, pleading generally that the witness is not worthy to be believed on his oath, is to be received. Any such allegation, when offered, must precede publication, and must plead generally that the witness is of bad character and reputation, and not to be believed on his oath without imputing to him any specific charges.

When several pleas are given in a cause, witnesses are to be examined on each plea; and all other steps are to be pursued in the same manner as directed in respect of the plaintiff's libel.

It is the duty of the proctors to take especial care that the libel and defensive allegation contain all the facts material to the decision of the cause, so that several pleas may not unnecessarily be given.

When publication shall have taken place on all pleas, the cause is to be set down to be heard at a time to be appointed by the judge. Counsel are to be furnished with copies of all material papers, viz., pleas, exhibits, and depositions of witnesses, but not of warrants, decrees, or other formal instruments, unless from circumstances, the contents of such instruments may be material

discussion of the cause. se for hearing on each is to be prepared by spective proctors, briefly g the proceedings which taken place, and calling tention of counsel to the ; which each party may the judge to pronounce. vidence is not to be abed, nor are documents of counsel are furnished copies to be more than y described in the case. nghtened details are to oided, but the attention nsel is to be directed to rincipal points. A rea- le fee is to be paid to el on the hearing; and if se takes more than one argument, a moderate onal or refreshing fee is 'given for each subse- day. Definite sentences iting are only requisite elict and piratical cases. er causes the judgment e given by interlocutory s, and entered by the ar in the assignation

contempt; directing either the attachment to issue immediately, or to be suspended for a reasonable time, as circumstances may in his judgment require. This attachment is to be extracted from the registry. The previous service of a monition may not always be necessary. Where the disobedience is manifest upon the face of the proceedings, and it is clear that the order of the court must be known to the party, an attachment may be decreed without a previous monition; but in cases where sureties are to be attached, a previous monition is indispensable. Upon compliance with the order, for disobedience of which the attachment issued, and upon payment of the costs of the attachment, the marshal, or other person executing it, is to release the party, certifying to the judge fully what has been done; but in cases of doubt he may resort to the judge for directions previous to the release.

it become necessary to e a judgment, a moni- s to be taken out against arty principal and his und served in the manner directed in regard to ments requiring personal e. Upon the return into of the monition, with a cate of its due service sed thereon, and the thereof not being obeyed, udge, upon motion of el, may decree an at- ent against the person of arty monished for his

#### § 14. *Proceeding by Act on Petition.*

In case bail has been given to the action, a minute is to be made in the assignation book by the registrar, assigning the proctor for the party proceeding to deliver his act on petition to the adverse proctor by a time to be fixed by the judge. The proctor is then to set forth the facts of the case in a plain narrative manner, without argument, and concluding with his prayer. This, having been

settled by counsel (for which purpose he is to be furnished with a copy), is to be copied fair for the court, and then delivered to the adverse proctor that he may reply thereto, and with the reply, it must be returned to the proctor of the party proceeding, that he may make a rejoinder thereto if necessary. The reply and rejoinder must also be settled by counsel in the same manner as the act.

The facts alleged in the act on petition are to be supported by affidavits; and any necessary exhibits, or documents annexed thereto, are to be verified in such affidavits, which are to be confined to the material averments, and are not to be settled by counsel.

Should any delay occur in the delivery of the act from one proctor to the other, either of them may allege the same, in the presence of the registrar, before the judge, who is to direct the act to be returned by a time to be specified; and if it be not returned by that time, or good cause shown for the delay, the judge is to assign to hear the act on petition *ex parte*, and no unnecessary postponement may take place, for which purpose a copy of the act, instead of the original, together with the affidavits on behalf of the party, must be brought in by the proctor applying to have the cause so heard.

When the article is concluded, it is to be signed by both proctors who are to attend before the judge or sur-

rogate, in the presence of the registrar, to bring in the same, together with the original affidavits and exhibits. No further affidavits or documents are to be afterwards received, unless by leave of the judge obtained on special application. The judge is then to appoint the cause for hearing, and thereupon one copy of the affidavits and exhibits is to be made for each of the counsel, and one for the adverse proctor, to be delivered to him when the originals are brought in. The adverse proctor is also to make copies for his own counsel. The same rules, as to the preparing the case for hearing, delivering copies of papers, fees to counsel, and the same proceedings for enforcing obedience to the decree, are to be observed as in a cause conducted by plea and proof.

#### § 15. *Suits for Mariners' Wages.*

The same regulations as to the arrest of a ship, the subsequent proceeding by default or in *parnam*, and the rules for conducting a cause by plea and proof, are to be applicable to the suit of a mariner for his wages, which is called a cause of subtraction of wages, in which the mariner may proceed against the ship, freight, and master, or the ship and freight, or the owner, or the master alone; and any number of mariners, not exceeding six, may proceed jointly in one action.

When an appearance is given, the proctor for the party pro-

ceeding is entitled to an assignment on the defendant to bring into court the mariner's contract and ship's books; and he is not compelled to file his libel until they are so brought in.

The libel, if in common form, and pleading no special matter, should state the hiring, rate of wages, performance of service, and the refusal of payment; and should have annexed to it a schedule, stating the whole amount of wages, with the sum received on account, and balance claimed to be due. This plea is termed a summary petition, and should not be settled by

#### § 16. *Suits for Pilotage.*

Suits for the recovery of pilotage, where no party appears to defend the action, may be conducted by default or *in pœnam*. When contested, the proceeding will be by plea and proof; the libel or plea, as in suits for wages, if containing no special matter, is also called a summary petition, and need not be settled by counsel.

#### § 17. *Suits of Bottomry.*

These suits may likewise be conducted by default or *in pœnam*, and ships may be sold, in virtue of a decree of the court, for the payment of bottomry bonds without any appearance having been given to defend the action.

When the validity of the bond is contested, the cause generally proceeds by act on

petition and affidavits, but the party promoting the cause may, if he thinks proper, proceed by plea and proof; and it is competent to defendant, on his appearance, to require the cause to be conducted in that manner, for which purpose he must pray the judge to assign the promoter to bring in a libel.

Before the warrant is extracted from the registry, the original bond must be exhibited to the registrar in addition to the usual affidavit.

#### § 18. *Causes of Damage by Collision.*

These causes may also be prosecuted by default or *in pœnam*. When defended, the suit is conducted by plea and proof, and differs in no respect from that mode of proceeding already detailed.

#### *Suits of Damage by Beating or Assault on the High Seas.*

In these cases the suit is by plea and proof, and the warrant is necessarily against the person.

#### *Prosecutions for Contempt in breach of the Maritime Law, and of the Regulations and Instructions relating to His Majesty's Service at Sea.*

These prosecutions can only be instituted on complaint by an officer in his majesty's navy, and under the direction of the lord high admiral, or the commissioners for executing the office of lord high admiral of

the United Kingdom, or of some one of the admirals or commanders-in-chief of the naval squadrons abroad, and are to be conducted in the following manner:—

An affidavit of two persons is to be exhibited by the proctor for the crown, stating the name and description of the party intended to be proceeded against, and detailing the particulars of the offence committed, which affidavit, with a short case, is to be delivered to the advocate for the crown to move the judge to decree the warrant of arrest, who, in making the decree, is to specify the amount of the bail to be given as he shall consider sufficient to ensure the personal appearance of the party prosecuted when judgment shall be pronounced. This amount is to be stated in the action book and on the face of the warrant. The marshal is then to execute the warrant by the arrest of the person of the offender, who is to be liberated on giving sufficient bail, which is to be taken in the usual manner.

On the appearance being given, the proctor for the crown is to be assigned to exhibit articles pleading the offence within a short time to be specified by the judge.

These articles are to be prepared by the proctor for the crown, and may be settled by counsel, and the cause is then to proceed like other suits, by plea and proof, with the following exceptions:

*1st.* On the articles or plea being admitted to proof, the

defendant must be assigned to declare in act of court, within a reasonable time, generally whether he denies the facts pleaded, which is termed giving a negative issue, or whether he confesses them, which is termed giving an affirmative issue.

2ndly. In case of an affirmative issue, the judgment of the court may be immediately pronounced, on which occasion the defendant is to be allowed to exhibit affidavits in mitigation of punishment, but not to deny the offence charged.

3rdly. Extended personal answers in writing to the different positions or averments of the articles cannot be required from the defendant.

4thly. Where a negative issue is given, the defendant may be at liberty to offer a defensive plea.

After the evidence is taken, if the judge shall decide that the charge is established, he will proceed to give sentence, imposing the fines due by law on the defendant and condemning him in the costs. In very aggravated cases, the defendant may also be imprisoned for a limited time. Affidavits in mitigation may be offered and are to be received when the offence has been proved by evidence.

#### § 19. *Suits for Salvage.*

The ordinary course of proceeding is by act on petition, but in cases where no appearance is given these suits may be prosecuted by default or *in personam*. The property must on

no account be released from arrest until a value shall be agreed upon between the parties and alleged in minute of court, which is to be entered by the registrar in the assignment book.

If the value cannot be agreed upon, a decree of appraisal must be extracted by the proctor for the salvors, and executed and returned into court before the property is released. This constat of the value is necessary both for regulating the amount of bail to be taken, and for guiding the judge at the final hearing, in fixing a proper remuneration for the services of the salvors, with reference to the value of the property saved.

#### § 20. *Causes of Possession.*

These causes are to commence by the entry of an action at the suit of the owners or owner of a majority of interest in the ship, and a warrant is to be issued to obtain possession thereof from any party who may withhold the same. No amount of action need be inserted in the action book, or on the face of the warrant.

An affidavit of the party proceeding is to be prepared by the proctor, and laid before counsel, with a short case stating the circumstances, in order to move for the warrant, which can be obtained only on motion of counsel. The affidavit need not previously, as in other cases, be left in the registry. On this occasion, the judge or surrogate is to be attended by

the proctor, counsel, and registrar; and the judge, on reading the affidavit, if it be satisfactory, will, on motion of counsel, decree the warrant citing all persons in general to appear and answer to the party proceeding in a cause of possession. The warrant having been served on the ship is to be returned into the registry, and if no appearance be given within a month from such return, the judge, if satisfied that the party proceeding has a majority of the legal interest, is, on the affidavit originally brought in, or on further proofs, if necessary, being exhibited on motion of counsel on the next regularly adjourned court day, by interlocutory decree to order possession of the ship to be delivered to the party proceeding, or if necessary to assign a further limited time for entering an appearance, and on any subsequent regularly adjourned court-day in like manner pronounce his decree, which is issued by the registrar from the registry.

Should any party appear to contest the right of possession, the cause is to proceed by act on petition and affidavits, the ship remaining in the custody of the court until the final hearing, because the object of the suit, which is to obtain actual possession of the property, cannot otherwise be secured.

Upon an interlocutory decree being pronounced in favor of either party, a decree of possession is to be issued accordingly.

During the dependence of the suit on proof by affidavit being exhibited that the ship's register is in the possession of any person whomsoever, a monition may be issued requiring him to bring it in, or shew cause why it should not be brought into the registry to abide the event of the suit. Or, after the hearing, should the ship's register remain in the possession of any person, the judge may, on proof thereof, issue a monition directing him to deliver up the same to the party in whose favour the decree has been made.

Causes of possession may also be conducted by plea and proof at the option of either party.

§ 21. *Action to obtain Security for the safe return of a Vessel.*

Actions of this description occur when a part owner is dissatisfied with the management of his co-owners, and requires the ship to be restrained from proceeding on a voyage until bail shall be given for her safe return to the port to which she belongs.

An affidavit of the party is first to be made setting forth the number of shares of which he is the legal owner, that he is dissatisfied with the management of the ship, and is desirous of obtaining bail for her safe return to the port to which she belongs, to the amount of the value of his shares, which value is to be stated in the affidavit. And upon this affidavit, which need not previ-

ously be left in the registry, the judge or surrogate in chambers is to be moved by counsel to issue the warrant of arrest.

The action should be entered in the amount of the value of the shares of the party proceeding, and in a further moderate sum to cover the costs; and on bail being given, the vessel is to be released and allowed to proceed on her voyage.

In case of the parties differing as to the value of the vessel, she must be appraised under the authority of the court; and the actual value of the shares of the party proceeding at the period of giving bail, whether the ship be appraised or not, is the amount to be recovered in case the bond shall ultimately be pronounced to be forfeited.

The costs of the arrest are to be borne by the party proceeding; and the costs of giving bail by the defendant, unless the judge shall see cause to order otherwise.

In the event of the loss of the vessel before her return to the port to which she belongs (until which time the bail bond remains in force,) the party principal and his sureties may be called on by monition to show cause why they should not bring in the amount of their recognizances, in order to abide the judgment of the court. To obtain this monition an affidavit must be exhibited, showing that the bond has become forfeited, and it must be moved for by counsel before

the judge or surrogate. The monition when obtained requires personal service.

Should an appearance be given and the suit be contested, the proctor of the party proceeding is to be assigned to deliver an act on petition to the adverse proctor, and the cause is then to take the same course as other cases conducted by act on petition.

§ 22. *Derelict Cases.*

In cases of derelict the action is to be entered and the warrant extracted by the proctor for the admiralty, without any amount of action being stated in the action book or on the warrant, and no affidavit is necessary to obtain the warrant, which, when issued, is to be served by affixing it for a short time on the ship or goods found derelict, and by leaving thereon affixed a true copy thereof. The warrant is then to be returned by the proctor into the registry.

After the lapse of three months from the return of the warrant (the property remaining in the custody of the court,) the judge, on the next regularly adjourned court-day, at the petition of the proctor, and on his allegation in court that the warrant has been returned upwards of three months, and that no appearance has been given, is to decree a monition to issue, calling upon all persons to appear and show cause why the property should not be condemned, at the expiration of a year and a day from

the return of the warrant, as droits and perquisites of his majesty in his office of admiralty. The monition is to be made returnable at three months after its date, and is to be served by affixing the original for a short time either on the court-house or on the exchange, or place of common resort of merchants, or as the usage of the colony or settlement may be, and by leaving thereon affixed a true copy thereof. The object of this general service is to give the utmost publicity, so that the contents of the monition may be most likely to reach the knowledge of all parties interested. After this service, the monition is to be returned into the registry, with a certificate of service endorsed thereon.

If the property be in a perishable condition, and the judge be satisfied by affidavit at any period after the arrest that it would be for the benefit of all parties interested therein that the same should be forthwith sold, it may be appraised and sold under the direction and authority of the court, and the proceeds paid into the registry.

At the expiration of a year and a day from the return of the warrant, if no claim or appearance be given for the owners, the judge, on the next regularly adjourned court-day, is to proceed to condemn by sentence the property as droits and perquisites of his majesty in his office of admiralty. The sentence is to be prepared by the proctor, who is to make a



fair copy thereof for the judge's signature, which is to be signed in court in presence of the registrar and a certificate is to be added by the registrar on the sentence, and a minute made in the assignation book of the same having been so signed.

The owners of property proceeded against as derelict, may appear at any time before the termination of the cause, and claim the same without being liable to any fees of contumacy incurred prior to their appearance. The claim with an affidavit in verification thereof, is to be drawn by the proctor, and should set forth the name, residence, and occupation of the owner, the title of the party to, and the identity of, the ship or goods claimed. Documents or exhibits in support of the affidavit may be annexed thereto. When the claim and affidavit have been settled by counsel, the proctor is to attend his party before the judge or surrogate, to be sworn to the same in the presence of the registrar, and the judge will then assign to hear on admission thereof on the next court-day, or at any other time to be by him fixed, of which notice is to be given to the parties. A copy of the affidavit and claim is to be given to the proctor for the crown, and if the counsel for the crown be satisfied that the party claiming is entitled to restitution of the property, he is to consent to the same being restored, which on motion of counsel before the judge may *be immediately done on pay-*

ment of the salvage, and the expenses on behalf of the crown. The instrument of restitution is to be prepared by the registrar, and extracted from the registry by the proctor for the claimant. The interests of salvors are always to be protected, and to this end, if restitution be consented to, and if salvage has not been previously paid, bail to our sovereign lord the king, in his office of admiralty, in a sum sufficient to answer salvage, must be given by two persons on behalf of the owners before the instrument of restitution is to be issued.

If the title to the property is contested the cause must come on to be heard in court; a case and papers being delivered to counsel as in other contested causes.

§ 27. *Prosecutions for Breach of the Revenue or Navigation Laws.*

An affidavit is to be made by the seizer, detailing the grounds of the seizure and the circumstances attending the same, to which, in the case of a vessel being seized, are to be annexed all original papers that have been delivered up at the time of seizure, and which must be verified in the affidavit. Or if the ship's papers have been concealed, thrown overboard, or destroyed, the fact of such concealment or destruction should be stated in the affidavit.

The affidavit is to be exhibited to the judge or surrogate,

who is to decree a monition to issue, returnable fourteen days after service, citing by name the owners, or persons implicated (if known) in special, and all others in general, to appear and show cause why the forfeiture should not be decreed, and the penalties due by law pronounced for: but where the parties are not known the monitions must only cite all persons in general.

When the monition specifies the names of the parties cited, it must be personally served on them like other instruments requiring personal service, and must also, like other monitions where the names of parties are not mentioned, be served on the exchange or court-house, or other public place, as before directed respecting instruments requiring service against all persons in general.

The monition having been served and no appearance being given, the judge is to proceed by interlocutory decree to condemn the property: but such condemnation is not to take place on any other than a regularly adjourned court-day, and not until the expiration of fourteen days from the return of the monition, and if it has been personally served, the judge may, without requiring any further evidence than the affidavit to lead the monition, pronounce for the penalties due by law.

If a personal service of the monition cannot be effected by reason that the persons named therein have purposely absented themselves to avoid the

service, the judge may pronounce a similar decree; but if he has reason to believe that the persons named in the monition are *bona fide* ignorant thereof, he is to reserve his judgment so far as relates to the penalties sued for, and also as to the property, should any doubt arise upon the evidence.

In the case of a monition citing all persons in general, and not describing any person by name, no penalties can be pronounced for, but if the persons by whom the offence was committed shall afterwards be discovered, a subsequent monition may be issued in the same suit against him or them for recovery of the penalties.

In order to move for the interlocutory decree, a case, with a copy of the affidavit, must be delivered to counsel.

A claim may be given on behalf of the owners at any time before the interlocutory decree, and the claimant may, if he think fit, require the seizer to file an information or libel, to which the claimant may give in a responsive plea or allegation, and the case will then proceed by plea and proof in the manner before mentioned.

To the claim must be annexed an affidavit, containing the names, descriptions, and residence of the owners, and a detail of all the circumstances on which the claimant means to rely as the grounds of his defence.

The claim and affidavit are to be prepared and given in as directed in derelict cases; but

in compliance with the act, 6 Geo. IV., c. 114, s. 62, security must be given on behalf of the claimant in the sum of £60 sterling, to answer costs before any claim can be received.

Upon a claim being filed, the judge, with the consent of the collector and comptroller of the customs, may order the delivery of the property to the claimant on his giving bond, with two sufficient sureties, to answer double the value of the same, as provided by the 58th section of the said act.

The court, on the application of the officer of the customs, or parties interested, may, at any time before condemnation, direct the property to be sold, if it shall satisfactorily appear by affidavit that a sale will be beneficial to all parties interested.

When a claim is given, and no libel prayed, the court may proceed to adjudge the case upon the facts and circumstances stated in the affidavits on both sides; but if it shall appear to the judge that the case is not sufficiently proved by such evidence, he may direct an information or libel to be filed by the seizer, and give leave to the claimant to file a responsive allegation: in which case witnesses are to be examined on both sides, and the cause will proceed as in plea and proof cases. After condemnation, the sale must take place according to the provisions of the 56th section of the said act.

In order to remedy complaints which have been made

of the burthensome law charges on the colonies, on proceedings in revenue cases of small value, it is directed, that any number of seizures, not exceeding in the aggregate value £300, and not individually exceeding the sum of £100, may be included in one monition, and that different seizing officers may proceed conjointly in the same prosecution,—care being taken that the monition, and also the libel where that proceeding is required, be drawn conformably with the several circumstances, and that the different seizures be described in separate articles or counts of the libel or information. And to obviate any possible delay in the proceedings of the seizing officer, any claimant is to be at liberty to take out a monition against the seizer, returnable three days after service thereof, requiring him immediately to proceed to the adjudication of the property seized. For this purpose, and also to enable the seizer to determine whether to proceed separately as to one seizure, or to wait for the chance of including other seizures in the same process, by a consideration of the expenses of warehousing and custody of the seizure, the seizer is, without delay, in all cases where the probable amount of the seizure does not exceed in value £100 to report the facts to the registrar of the court.

In cases where it shall be deemed necessary to proceed immediately without waiting for other seizures, and the value is under £100, the several

rges of the proceeding and  
idication are to be reduced  
per cent. upon the usual  
rges; and if the property  
rately proceeded against  
not exceed the value of  
, one-half of the usual fees  
are to be charged.

*b. General Rules to be ob-  
served in Practice—Subduc-  
tion of an Action.*

a party proceeding deter-  
e to abandon his suit, or  
compromised the same, he  
at any period be allowed  
educt the action; to which  
the proctor who has ex-  
ted the warrant is to sign a  
t entry to that effect in the  
on book, and the property,  
ny have been arrested, is to  
mmediately released.

§ 29. *Tender.*

Whenever a tender is made  
ehalf of a defendant to pay  
ertain sum of money, the  
tendered must be brought  
the registry, and an under-  
ng given for payment of  
costs incurred up to that  
; this must be done before  
judge or surrogate, in the  
ence of the registrar and  
adverse proctor, and a  
ute thereof is to be entered  
he assignment book, and  
proctor for the plaintiff is to  
assigned to declare whether  
will accept the tender or not,  
in a time to be limited by  
judge.

If the tender be refused, and  
court shall ultimately con-  
r the same to have been

sufficient, the plaintiff, in gene-  
ral cases, is to be subject to all  
the costs incurred subsequent  
to the refusal, but under spe-  
cial circumstances, where the  
enforcement of this rule may  
be attended with injustice or  
hardship, the court may exer-  
cise its discretion by forbearing  
to condemn him in costs.

§ 30. *References.*

In cases where a reference  
of the subject in litigation may  
be expedient, the judge, either  
for his own satisfaction or at  
the instance of either of the  
parties, may refer any accounts  
or demands, or any matter in-  
cidental thereto, to the regis-  
trar, directing him to take to  
his assistance one or two mer-  
chants, and to investigate and  
report on the matter. The  
merchants to be selected by  
the registrar and approved by  
the judge.

The reference being ordered,  
the registrar is forthwith to  
make an appointment with the  
proctors of the parties and with  
the assistant merchant or mer-  
chants, and all necessary docu-  
ments being produced, the re-  
gistrar and merchants are to  
hear the matters in dispute  
discussed by the proctors and  
the parties principal, or their  
agents. The registrar is after-  
wards to draw up the result of  
the investigation, and of their  
joint deliberation thereon, in a  
written report, to be brought  
into court, and a minute to  
that effect is to be thereupon  
made in the assignment book.

The judge is to direct the  
report to be confirmed, unless

objected to by either party by the succeeding adjourned court-day, or within a time to be limited by him. The report may be confirmed at the prayer of either of the proctors, and either may object to the report wholly or in part; but the party objecting must so declare in act of court, and is to be assigned by the judge to deliver in an act on petition, setting forth his objections to the adverse proctor, within a time to be limited. And the subsequent proceedings are then to be conducted as on all other acts on petition.

#### § 31. *Taxation of Costs.*

The proctor of the party who has obtained a decree or order condemning another party in the costs, is to furnish the adverse proctor and the registrar each with a copy of his bill, and to attend the registrar to procure an appointment to tax the same, of which notice is to be given to the adverse proctor, that he may be present thereat; and if he shall decline, or neglect to attend, the taxation may proceed in his absence upon an affidavit being exhibited to and filed with the registrar, shewing that a copy of the bill had been furnished, and that twenty-four hours' previous notice of the appointment had been given to him.

If the amount of the costs ascertained by the registrar be not forthwith paid, the registrar is to report the amount to the court, when, if no objection be made, the judge is to sign the

bill, which completes the taxation, and a minute thereof is to be entered in the assignation book.

If the adverse proctor be dissatisfied with the amount proposed to be allowed, he is, on the same being reported and before the bill is signed by the judge, so to declare in court; and in that case the judge is to assign him to deliver an act on petition in objection to the taxation within a short time to be specified, and subsequently the same course is to be pursued as in other acts on petition.

When the judge has signed the bill, whether as originally reported by the registrar, or with any subsequent alteration, he is to decree a monition for payment thereof; and if the costs be not immediately paid, such monition may be extracted and served as usual, and may be followed up by attachment if necessary.

#### § 32. *Incidental Monitions.*

In any cause, however commenced, monitions may incidentally become necessary, which are to be made returnable at a period to be fixed by the judge; and if the tenor of the monition be not complied with, the judge, on proof that it has been duly served, may enforce obedience thereto by attachment.

#### § 33. *Commissions.*

Commissions to take bail, to take the answers of parties to a libel or allegation, to take

the oaths of parties or others to affidavits, to examine witnesses, and the like, may, under the authority, and at the discretion of the judge, issue in cases where the parties reside at so great a distance that the transaction of the business by commission will be attended with less expense than their personal appearance before the court.

Commissions may also issue for the unlivery of a cargo, for the appraisement or sale of a ship or cargo, or for the appraisement and sale of a ship and cargo in cases when, by reason of the distance, the marshal cannot be conveniently employed for the purpose without great expense.

All commissions are to be directed to respectable merchants, or professional men named by the proctors; and when they can agree thereto, one commissioner will be sufficient, otherwise a commissioner is to be nominated by each party.

#### § 34. *Acts on Petition.*

In cases where any incidental matter may become the subject of dispute, and either of the parties shall desire it, or if the judge shall deem it necessary for his own satisfaction to have the facts further elucidated, he may direct the circumstances to be set forth in an act on petition.

#### § 35. *Appeals.*

All appeals from decrees of the vice-admiralty courts are to be asserted by a party in the

suit within fifteen days after the date of the decree, which is to be done by the proctor declaring the same in court; and a minute thereof is to be entered in the assignation book. And the party must also give bail within fifteen days from the assertion of the appeal in the sum of £100 sterling to answer the costs of such appeal.

In all cases, however, in which an appeal is asserted, except respecting slaves, the judge may proceed to carry his sentence into execution, provided the party in whose favour the decree has been made give bail to abide the event of the appeal, by two sureties in the amount of the value of the property or subject in dispute, together with the further sum of £100 sterling to answer costs, in the event of the same being awarded by the superior court.

The party appealing, having complied with these regulations, is then to cause the judge and registrar to be served with an inhibition from the high court of admiralty, restraining them from further proceeding in the cause, and also with a monition to transmit the process.

This process will consist of a fair copy of the proceedings under the seal of the vice-admiralty court, to be made and signed by the registrar, at the expense of the party ordering the same, which is to be transmitted to the superior court pursuant to the monition.

The proceeds, if in court, or in the hands of any individual, must, on a special monition for

that purpose being served, be remitted to the registrar of the high court of admiralty or court of appeal.

§ 36. *Regulations as to the Sittings of the Court.*

Before the rising of the court, the judge is always to adjourn the same to a day to be by him fixed at his discretion, and proclamation thereof is thereupon to be made in open court by the marshal or officer of the court. It is, however, competent to the judge, notwithstanding such adjournment, subsequently to appoint an intermediate day or days, as may appear to him to be necessary, for the expediting any particular cause or causes before the court.

Forty-eight hours' notice of such intermediate court-days must always be published in the gazette or public newspaper of the colony by the registrar, at the expense of the party at whose instance or for whose benefit the court is to be so called, which expense is to be paid by the prector.

Care is always to be taken that on such intermediate court-days, no assignation be sped, or order made, precluding the right, or to the manifest injury of any absent party, when it shall appear that he cannot have received sufficient notice of the sitting of the court; and absent parties are always to be entitled to the favorable consideration of the judge, if on the next succeeding regularly adjourned court-day cause shall be shown why an assign-

ation made on any intermediate court-day had not been complied with.

In like manner, when an assignation has been made for an act to be done by a limited time, shall not have been duly complied with, and an intermediate court-day shall be subsequently held, parties who cannot by possibility have been cognizant of such intermediate court, and who may have very conclusive reasons to allege why they have been unable to comply with such assignation, are not to be prejudiced by the enforcement of the same on such intermediate court-day.

§ 37. *As to the Return and Service of Warrants, Monitions, and other Instruments.*

In general cases, warrants, monitions, and other instruments are to be made returnable, and parties cited to appear at the registry, either on a certain day mentioned, or at the expiration of a certain number of days after service, to be specified in the instrument, and between any two hours of the day most usually appropriated to public business.

Monitions to pay costs or a sum of money, or to do any specific act within a certain number of days, are to be returnable at the expiration of the usual hours of business at the registry, on the furthest or last day assigned to the party to do the act.

If no appearance be given thereto, the registrar is immediately, on the expiration of



the time specified, to attend before the judge or surrogate in court or chambers, with the proctor who is to return the instrument; and the proceedings are subsequently to be continued according to the requisites of the cause. The day of such return is the period from which is to be reckoned, for all future purposes, the contumacy or default of the party cited and not appearing.

Instruments against all persons in general, and which are served only on the ship or goods, or on the exchange, or principal resort of merchants, or on the court-house, can only be further proceeded on *in pœnam* on the regularly adjourned court-days. But an instrument which has been personally served and duly returned, may be followed up by all further proceedings, even to attachment, without more regard to the regularly adjourned court-days than would be necessary respecting any other incident in the proceedings, because in such cases the party who has been served must always be aware of the liabilities to which he is exposed by his own laches, or contempt.

If an instrument be served on a ship, or goods laden on board a ship, when the master is on board, and the action be one to which he ought to appear and become a defendant, such service may, for the purpose of future proceedings, be considered equivalent to a personal service on him.

Wherever any monition or other instrument is served by

any other person than the marshal, the certificate of the service thereof must be verified by an affidavit of the person serving the same.

All warrants, monitions, and other instruments requiring ulterior proceedings *in pœnam*, in case of no appearance or of non-obedience, must be duly returned at the time specified for their return; and if not then duly returned, no further proceedings can be had thereon.

### § 38. *Interlocutory Decree.*

The interlocutory decree, which must always be moved by counsel, is the final act of adjudication in the principal cause of action in any suit. But in some few instances a suit may be terminated without it, viz. :—

Where a libel is rejected.

Where a defendant is dismissed because the promoter does not bring in his libel.

Where a protest is pronounced for, and the party appearing under protest is dismissed.

Where an action is subducted.

If sureties apply to be dismissed from their recognizances, it must be done by interlocutory decree; but if they are dismissed by the interlocutory decree in the principal cause, no further decree of that kind is necessary for their dismissal.

The fees due to the judge and officers on an interlocutory decree, are chargeable to all parties who receive benefit under the same; thus, in a case



of derelict, the fees are chargeable to the claimant who obtains restitution of the property, and to the salvors to whom salvage may be awarded.

No decree is to be made, nor act of court to be sped by the judge or surrogate, without the presence of the registrar, by whom a minute or record thereof must be made and attested, except only in case of the registrar's unavoidable absence, on which occasion the judge or surrogate may assume an actuary to attest *pro hac vice* the act to be done. Any practitioner of the court, provided he be not concerned in the suit in which the act is to be done, may perform this part of the registrar's duty, attesting by his signature the entry of the act in the assignation book.

#### § 39. *Monitions.*

If a monition be not decreed at the time an interlocutory decree is made, it may, at the petition of the proctor on either side, be decreed on any court-day afterwards.

No monition to pay costs can be extracted until after such costs shall have been regularly taxed by the court.

#### § 40. *Proxies.*

Although proxies are not usually exhibited in maritime suits, yet they may sometimes be required in order to prevent proctors from proceeding in causes on instructions from parties not being themselves entitled to intervene, or not

having a legal *personae standi* to prosecute a cause.

#### § 41. *Other General Rules.*

Upon the execution of commissions to take bail, the sureties must always justify their sufficiency before the commissioners, by being sworn to an affidavit, to be drawn by the registrar and annexed to the commission; and when bail is not taken by commission, and the court orders the sureties to justify, a similar affidavit must be made.

When a cargo has been delivered to the consignee, and he has not paid the freight, or when freight has been paid, and is in the possession of the owner of the ship, master, broker, or any other person, such freight may be arrested by service of a warrant upon the consignee or the person in whose hands the freight remains.

The same course is to be pursued when, under similar circumstances, a monition is to be served to bring the freight into the registry.

All commissions of unlivery, of appraisement, and of appraisal and sale, are to be extracted by the proctor for the plaintiff or promoter in the cause.

In those courts in which it may be necessary that the same individual should act as advocate and proctor, he may elect in which of the two capacities his fee, in those instances where the duties are necessarily exercised together, shall be

ed, and the practitioner  
o instance to be allowed  
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ss in both capacities,  
take a fee as counsel  
the act of a proctor only  
ssary. The same rule  
ply to the fee specified  
table for a consultation  
y intermediate stage of  
ceeding, should a "ne-  
arise to resort to coun-  
advice;" but an advo-  
fee for consultation is not  
charged on any occasion  
a reference to counsel  
not have been necessary.  
r practitioner in such cases  
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ultation as a proctor.  
he practitioner charges  
vocate's fee for motion  
arily made by counsel  
the judge in the progress  
ause, he is not to charge  
allowed the proctor's fee  
ending such motion, and  
he charges the advocate's  
or the hearing," he is not  
charge or to be allowed  
ctor's fee "for attending  
ations on the final hear-  
nor is he in any case,  
acting as counsel in the  
to charge the proctor's  
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g any plea, affidavit, in-  
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id to charge a copy to  
and also a fee for settling  
ne; but may be allowed,  
l thereof, to charge such

fee as the table prescribes for  
the advocate on settling, and  
also a moiety of the charges  
allowed by the table to the  
proctor for drawing and copy-  
ing.

It being provided by the 5th  
section of the act, under the  
authority of which these regu-  
lations are established, that  
persons feeling themselves ag-  
grieved by the allowance of  
any charges made by any offi-  
cers or practitioners in the said  
vice-admiralty courts, as not  
warranted by the established  
tables of fees, may have such  
charges re-taxed by the autho-  
rity of the high court of ad-  
miralty of England, upon sum-  
mary application thereto.

It is requisite when such  
applications are intended to be  
made to that court, that a set  
of the copies of all papers pre-  
viously made out and used in  
the proceedings upon which  
the charges objected to have  
arisen, or so many of them as  
may be necessary to explain or  
support the disputed charges,  
be transmitted to England; or  
if such copies cannot be trans-  
mitted without incurring an  
expense disproportionate to the  
object, it will be sufficient, as  
a substitute for the same, that  
an affidavit be made stating  
summarily the nature of the  
proceedings and the decree in  
the cause, a description of the  
different papers and the num-  
ber of folios contained in each  
of them, and such facts or cir-  
cumstances as will explain the  
nature of the cause and the  
charges objected to; which affi-  
davit is to be filed in the regis-

try of the vice-admiralty court, to give the officer or practitioner whose charges may be objected to, an opportunity of replying thereto, which he should do within a period not exceeding fourteen days, to be limited by the judge, who is then to order the costs already taxed to be referred for revision to the high court of admiralty, with copies of the affidavits. But, previous to any such order of reference being made, the party complaining must pay to the adverse prosecutor such part of the allowed charges as is not objected to, and must bring the remainder into the registry of the vice-admiralty court, to abide the decision of the high court of admiralty.

NOTE.—*The foregoing rules and regulations touching the*

*practice and proceedings in the several courts of vice-admiralty abroad, are extracted from a report addressed to the lords commissioners of his majesty's treasury, drawn up and signed by*

JAMES FARQUHAR,  
H. B. SWABEY,  
WILLIAM ROTHERY,

*and perused and approved by*

HEBBERT JENNER,  
JOHN DODSON,  
STEPHEN LUSHINGTON,

*And the whole together with the table of fees for the respective colonies, (regulated and approved by the same persons,) were submitted to and approved by the right honourable Sir CHRISTOPHER ROBINSON, judge of the high court of admiralty.*

## SUPPLEMENTARY RULES

ESTABLISHED BY THE QUEEN'S ORDER IN COUNCIL, DATED AT  
THE COURT AT BUCKINGHAM PALACE, THE SECOND  
DAY OF MARCH, 1848.

The rules and regulations established by the king's order in council of the 27th June, 1832, are not to be construed to have set aside the former practice of the courts of vice-admiralty, of allowing the defendant to require from the promoter to libel with sureties, unless the promoter should be admitted by the court to his juratory caution.

From the shortness of the season of the navigation at the port of Quebec, and the danger and risk to ships towards the close of the navigation in the autumn, from even so short as

twenty-four hours' notice of bail, to answer an action, the period of notice of bail as provided by the 11th section of the above rules and regulations, shall not be required where the parties who are proposed as the bail make oath that they are respectively worth more than the amount for which they are proposed as bail or security, over and above the amount of all their just debts.

J. DODSON,  
JOSEPH PHILLIMORE,  
WM. ROTHERY,  
H. B. SWABEY.

## ADDITIONAL RULES AND REGULATIONS

FOR THE SEVERAL COURTS OF VICE-ADMIRALTY ABROAD, ESTABLISHED BY HER MAJESTY'S ORDER IN COUNCIL, BEARING  
DATE THE SIXTH DAY OF JULY, 1859.

I. In all cases of damage, unless the judge shall be pleased otherwise to direct, each party or his proctor shall, before the libel or act on petition is given in, bring into and deposit in court a sealed packet

containing a statement of the following particulars:—

1. The names of the two vessels which came into collision, and the names of their respective masters.

2. The time of the collision as nearly as can be stated.

3. The place of the collision.

4. The direction of the wind.

5. The state of the weather.

6. The courses of the respective vessels on first sighting each other.

7. The distance at which the other vessel was first seen.

8. The steps taken to avoid the collision.

9. The parts of each vessel which first came in contact.

And such packets shall remain in the registry sealed up, and shall not be opened, save with the permission of the judge, until the proofs in the cause are brought in, or the whole of the pleadings and evidence are concluded, and such statements shall be called the "preliminary acts," and may be in the form of the schedule hereto annexed, marked A. (*V. post.* p. 308.)

II. It shall be competent to the court, if it shall think fit so to do, and if the parties in the cause consent thereto, to direct the evidence to be taken upon the preliminary acts, and without its being necessary to bring in any further pleadings in the cause.

III. In proceedings by act on petition, the proctor, by whom the act is to be commenced, shall, on an appearance being given to the action, be assigned to bring in his act on petition by a time to be then fixed by the judge or his surrogate; and on his bringing in the same he shall deliver a copy thereof to the adverse proctor, who shall thereupon

be assigned to bring in his answer thereto by such further time as may be then fixed by the judge or surrogate, and on the answer or any subsequent writing to the act being brought in, the proctor bringing in the same shall deliver a copy thereof to the adverse proctor, and a similar assignation shall be made on the adverse proctor to bring in his reply thereto. And when both proctors decline to write further to the act, a conclusion (form of which is hereunto annexed, marked B) (*v. post.* p. 309) shall be brought in signed by both the proctors, and, on the proofs being given in, the cause shall be assigned for hearing.

IV. In the event of a proctor not complying with the assignation made upon him to bring in his act on petition within the time specified for such purpose, the court may dismiss the cause. And if after the act on petition shall have been given in, either proctor shall fail to comply with any assignation made upon him to bring in any subsequent writing to the act, the court may conclude the act, and assign the proctors to bring in their proofs within a time to be then fixed, in order that the cause may be set down for hearing.

V. In proceedings by plea and proof upon a libel or allegation being given in, an assignation shall be made upon the adverse proctor to bring in his allegation responsive thereto on some day to be then fixed by the judge or surrogate, and the libel or allegation so given

in as aforesaid shall stand admitted, unless the adverse proctor shall, within four days from the giving in of the same, declare in acts of court that he opposes the admissibility thereof.

VI. No witness shall be examined on any plea until after the pleadings in the cause have been concluded, except with the permission of the court, and upon good cause shown.

VII. The witnesses may be examined in one or other of the following methods:—

1. *Vidē voce* in open court.

2. By the registrar or an examiner of the court in chambers.

3. By a commissioner specially appointed by virtue of a commission to be issued under seal of the court, form of which is hereto annexed, marked C. (*V. post.* p. 309.)

VIII. When the witnesses are to be examined in open court, a list of the witnesses to be examined by each party is to be given to the adverse proctor forty-eight hours before the time appointed for their examination, provided that nothing herein contained shall prevent the immediate examination of the witnesses, if both parties in the cause consent thereto, and the court shall think fit to order it.

IX. It shall be competent to the court to summon and examine before it any witnesses, whether the proceedings shall have been by act on petition or by plea and proof, and whether the witnesses shall or shall not

have previously made affidavits or given evidence in the cause.

X. In any examination by the registrar or an examiner, or a commissioner specially appointed, the proctors in the cause, or their substitutes, may, unless the judge shall order to the contrary, be present; but the evidence, as well in chief as upon interrogatories, shall be taken down in writing by the registrar, examiner, or commissioner, as the case may be. The witnesses may be cross examined upon interrogatories either prepared beforehand, or framed and put in writing at the time of the examination, and, after cross-examination, they may in the same manner be re-examined also upon written interrogatories, but the questions shall in all cases be put, and the interrogatories be administered by the registrar, examiner, or commissioner.

XI. No party in a cause, except by special leave of the judge, shall be allowed to be present at such examination by the registrar, examiner, or commissioner, unless he shall be conducting the proceedings in person. And no party, proctor, or substitute shall be permitted to take any part in such examination, cross-examination, or re-examination, or in any manner to interfere with or object to the conductor of proceedings of the registrar, examiner, or commissioner, except to design the witnesses to the several articles of the pleas, and to tender written interrogatories to the registrar, ex-

aminer, or commissioner, for the purpose of their being administered to the witnesses.

XII. It shall not be necessary to repeat a witness to his deposition, either in chief or on interrogatories; but the registrar, examiner, or commissioner who shall have taken the evidence shall certify at the foot of the deposition that the same has been read over audibly and distinctly to the witness, and that the witness has acknowledged the same to be true.

XIII. If the witness refuse to sign his deposition, the registrar, examiner, or commissioner who shall have taken the evidence shall certify at the foot of the deposition that the witness has so refused, and that the deposition is in accordance with the evidence given by such witness, and the deposition of such witness may thereupon be read and referred to at the hearing of the cause.

XIV. It shall be competent to the court, whether the examinations take place in open court, or before the registrar, examiner, or commissioner, to direct the evidence of the witnesses to be taken down by a short-hand writer or reporter, who shall have been previously sworn faithfully to report the evidence, and a transcript of the short-hand writer's or reporter's notes, certified by him to be correct, and approved by the judge or the registrar, examiner, or commissioner, as the case may be, shall be admitted to prove the *oral* evidence of the witnesses,

and be taken down and used as evidence in the cause.

XV. Witnesses may be produced for examination before the registrar in any reference made to him either alone or with the assistance of merchants, after they shall have been duly sworn to speak the truth; and the evidence shall, if either party in the cause require it, be taken down by a short-hand writer or reporter appointed by the court, who shall be previously sworn faithfully to report the evidence, and a transcript of the short-hand writer's or reporter's notes, certified by him to be correct, and approved by the registrar, shall be admitted to prove the oral evidence of the witnesses, and be taken and used as evidence in any objection that may be taken to the registrar's report on such reference.

XVI. All the pleadings and proofs in a cause may, if the judge shall so direct, be printed prior to the hearing, and such printing shall be in such manner and form and under such regulations in regard to the cost and mode of printing the same as the judge of the court shall from time to time direct.

#### A.

##### PRELIMINARY ACT.

Insert title of cause—  
Statement on behalf of the  
Owners of the—

#### I.

The names of the  
vessels and their  
respective masters }

- II.  
Time of collision.
- III.  
Place of collision.
- IV.  
Direction of the  
wind ..... }
- V.  
State of the wea-  
ther ..... }
- VI.  
The courses of the  
respective vessels  
on first sighting  
each other ..... }
- VII.  
Distance at which  
the other vessel  
was first seen..... }
- VIII.  
Steps taken to  
avoid the colli-  
sion ..... }
- IX.  
Parts of each ves-  
sel which first  
came into colli-  
sion ..... }
- this—day of—185 .  
—Signature of party or  
his proctor.

## B.

CONCLUSION TO ACT ON  
PETITION.

In the presence of A. B., dis-  
senting, denying, alleging, and  
praying as before.

Whereupon the Judge as-  
signed to hear on petition of  
both proctors whensoever.

(Signed,) A. B.

C. D.

Date—185 .

## C.

VICTORIA, by the grace of God,  
of the United Kingdom of Great  
Britain and Ireland, Queen  
defender of the faith, to—,  
greeting. Whereas in a certain  
cause of—civil maritime pro-  
moted in our vice-admiralty  
court of—on behalf of—  
against the— or vessel  
(whereof—now is or lately  
was master), her tackle, appa-  
rel, and furniture—and  
against—intervening a com-  
mission has been duly decreed  
for the examination of certain  
witnesses necessary to prove  
the contents of the—, bearing  
date the—day of—one  
thousand eight hundred and  
—given in in the said cause  
on behalf of the said—(jus-  
tice so requiring). We do there-  
fore authorize and empower you,  
and do hereby will and require  
you that upon any day or days  
to be by you appointed (Sun-  
days excepted), you do in the  
presence of the proctor of the  
said—or his lawfully ap-  
pointed substitute or otherwise,  
notwithstanding his absence or  
contumacy, administer an oath  
upon the Holy Evangelists in  
due form of law unto the wit-  
nesses who shall be produced  
before you on behalf of the said  
—, to speak the truth in this  
behalf, and forthwith carefully  
examine and interrogate the  
said witnesses as well upon the  
articles of the said—, as upon  
the interrogatories to be admin-  
istered by the proctor of the said  
—, or his substitute, either  
annexed to these presents or to  
be delivered to you at the time  
of the examination of the said



witnesses, and cause their sayings and depositions to be faithfully reduced into writing; and further, that upon such the examination of the said witnesses being completed, you transmit to the judge of our aforesaid court, or his surrogate, their sayings and depositions, and the whole proceedings had and done

before you, reduced into a proper form, together with these presents.

Given in our aforesaid court, under the great seal thereof, the—day of—in the year of our Lord one thousand eight hundred and—and of our reign the—.

*Approved 6th July, 1859.*

### ADDITIONAL RULES

ESTABLISHED BY ORDER IN COUNCIL AT THE COURT AT WINDSOR,  
THE 22ND DAY OF OCTOBER, 1859.

I. Whenever any ship, vessel, goods or merchandize has or have been detained or captured by any of your majesty's ships or vessels of war, and it has been determined to send the same before some vice-admiralty court for adjudication, the commanding officer of the capturing ship shall deliver to the officer who may be sent in charge of the prize an authority to institute the necessary proceedings, and such authority shall be in the terms or to the effect contained in the exhibit hereto annexed, marked No. 1.\*

II. The officer to whom such authority is given shall, upon his arrival in port, or the commanding officer shall himself, if in port, deliver the said au-

thority to the queen's proctor in the colony, or in his absence, or on his refusal or default to institute proceedings, to any other proctor in the said colony; and such proctor may thereupon institute the necessary proceedings against the said prize, with a view to her condemnation.

III. At the termination of the proceedings the proctor who shall have conducted the suit on behalf of the queen's ship shall submit his costs, as also any charges which may have been paid by him, and which are properly chargeable against the said prize, including the expenses, if any, attending the

the—of—18, on the ground of—. This—day of—18.

To the queen's proctor or to any other proctor practising in the vice-admiralty court of—

—Commanding officer  
of H. M. Ship—

#### \*No. 1.

I request that you will, on the receipt of this, cause proceedings to be instituted on behalf of the officers and crew of Her Majesty's ship—against the—or vessel captured on

maintenance and conveyance of the prize officer and crew, for taxation; and the registrar of the court, after having carefully examined them, shall report to the court the amount at which such costs, charges, and expenses ought to be allowed.

IV. Should the prize be condemned, then, if the proceeds arising from the sale thereof are sufficient, the court may order payment of the sum at which the said costs, charges, and expenses have been taxed, to be made out of the said proceeds, and the balance of such proceeds shall be forthwith paid to the senior commissariat officer at the place, in order that the same may be remitted to this country, in accordance with the provisions of the act of the 17th Victoria, cap. 19.

V. But if the proceeds shall be insufficient to pay the amount at which the said costs, charges, and expenses have been taxed, the court may order the whole of the said proceeds to be paid in part satisfaction thereof; and the said proctor may then draw on the accountant-general of the navy a bill, at thirty days after sight, for the balance remaining unpaid, and shall transmit with such bill the authority above mentioned from the commanding officer of the capturing vessel for instituting proceedings against the said prize.

VI. If, however, there shall be no proceeds, or if the prize against which proceedings have been instituted has been decreed to be restored, the proctor may draw upon the accountant-

general of the navy a bill at thirty days after sight for the whole amount at which the said costs, charges, and expenses have been taxed and allowed by the court, and shall transmit with the said bill the authority from the commanding officer of the capturing ship, authorizing him to institute proceedings against the said prize.

VII. The registrar of the said court shall, as soon as possible after the said costs are taxed, and before the proctor has drawn upon the accountant-general of the navy for the amount which may be due to him, transmit the account of the said costs, charges and expenses in original, signed by himself and the judge of the said court, to the registrar of the high court of admiralty of England, accompanied with a certificate stating the amount at which it has been taxed, whether the whole or what part thereof has been paid, and whether any, and what part remains due, and for which the proctor may draw upon the accountant-general of the navy, and, if the proceedings have not been conducted by the queen's proctor, whether that officer has declined or refused to conduct them, and on what grounds.

VIII. The accountant-general of the navy shall, upon any such bill as aforesaid being presented to him for payment, forward to the registrar of the high court of admiralty a statement showing the amount for which the bill is drawn, the name and description of the



the prize, the names of the capturing ship and of its commanding officer, the date of the adjudication, the amount of proceeds, if any, the amounts of the costs as taxed and allowed, the amount, if any, for which the proctor has been authorized to draw upon the accountant-general of the navy, the payments that have been made out of the proceeds, specifying the amount thereof, to whom paid, and when, and such return shall

be signed by the judge and registrar of the said vice-admiralty court.

XII. These rules, orders and regulations, if approved by your majesty in council, shall be transmitted to all the vice-admiralty courts within your majesty's dominions, and shall come into operation on the 1st day of January, 1860, or as soon afterwards as it shall be known to the officers of the respective vice-admiralty courts.

*Approved 22nd October, 1859.*

RULES OF PRACTICE  
IN  
HER MAJESTY'S PRIVY COUNCIL.  

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JUDICIAL COMMITTEE,  
APPELLATE JURISDICTION.

AT THE COURT AT BUCKINGHAM PALACE,  
*The 13th day of June, 1853.*

PRESENT;  
THE QUEEN'S MOST EXCELLENT MAJESTY,  
HIS ROYAL HIGHNESS PRINCE ALBERT.

LORD PRESIDENT.  
LORD STEWART.  
DUKE OF NEWCASTLE.  
DUKE OF WELLINGTON.  
LORD CHAMBERLAIN.

EARL OF ABERDEEN.  
EARL OF CLARENDON.  
VISCOUNT PALMERSTON.  
MR. HERBERT.  
SIR JAMES GRAHAM, Bart.

**W**HEREAS there was this day read at the board a report from the right honourable the lords of the judicial committee of the privy council, dated the 30th May last past, humbly setting forth that the lords of the judicial committee have taken into consideration the practice of the committee with a view to greater *economy, despatch and efficiency* in the appellate jurisdiction of her majesty in council, and that their lordships have agreed humbly to report to her majesty that it is expedient that certain changes should be made in the existing practice in appeals, and recommending that certain rules and regulations therein set forth should henceforth be observed, obeyed, and carried

into execution, provided her majesty is pleased to approve the same: her majesty having taken the said report into consideration, was pleased, by and with the advice of her privy council, to approve thereof, and of the rules and regulations set forth therein, in the words following, *videlicet* :—

I. That any former usage or practice of her majesty's privy council notwithstanding, an appellant who shall succeed in obtaining a reversal or material alteration of any judgment, decree, or order appealed from, shall be entitled to recover the costs of the appeal from the respondent, except in cases in which the lords of the judicial committee may think fit otherwise to direct.

II. That the registrar, or other proper officer having the custody of records in any courts, or special jurisdiction, from which an appeal is brought to her majesty in council, be directed to send by post, with all possible despatch, one certified copy of the transcript record, in each cause, to the registrar of her majesty's privy council, Whitehall; and that all such transcripts be registered in the privy council office, with the date of their arrival, the names of the parties, and the date of the sentence appealed from; and that such transcript be accompanied by a correct and complete index of all the papers, documents, and exhibits in the cause; and that the registrar of the court appealed from, or other proper officer of such court, be directed

to omit from such transcript all merely formal documents, provided such omission be stated and certified in the said index of papers; and that especial care be taken not to allow any document to be set forth more than once in such transcript; and that no certified copies of the record be transmitted to agents in England, by or on behalf of the parties in the suit; and that the fees and expenses incurred and paid for the preparation of such transcript be stated and certified upon it by the registrar, or other officer preparing the same.

III. That when the record of proceedings, or evidence in the cause appealed, has been printed or partly printed abroad, the registrar, or other proper officer of the court from which the appeal is brought, shall be bound to send home the same in a printed form, either wholly or so far as the same may have been printed; and that he do certify the same to be correct, on two copies, by signing his name on every printed sheet, and by affixing the seal, if any, of the court appealed from to these copies, with the sanction of the court; and that in all cases in which the parties in appeals shall think fit to have the proceedings printed abroad, they shall be at liberty to do so, provided they cause fifty copies of the same to be printed *in folio*, \*and transmitted, at their expense, to the registrar of the

\*Now *demj quarto*—v. order of 24th March, 1871, p. 320 *post*.

privy council; two of which printed copies shall be certified, as above, by the officers of the court appealed from; and in this case no further expense for copying or printing the record will be incurred or allowed in England.

IV. That on the arrival of a written transcript of appeal at the privy council office, Whitehall, the appellant, or the agent of the appellant prosecuting the same, shall be at liberty to call on the register of the privy council to cause it, or such part thereof as the respondent, or his agent may require, to be printed by her majesty's printer, or by any other printer, on the same terms—the appellant or his agent engaging to pay the costs of preparing a copy for the printer, at a rate not exceeding one shilling per brief sheet—and likewise the costs of printing such record or appendix; and that one hundred copies of the same be struck off, whereof thirty copies are to be delivered to the agents on each side, and forty kept for the use of the judicial committee; and that no other fee for solicitors' copies of the transcript, or for drawing the joint appendix, be henceforth allowed—the solicitors on both sides being allowed to have access to the original papers at the council office, and to extract, or cause to be extracted and copied, such parts thereof as are necessary for the preparation of the petition of appeal, at the stationer's charge, not exceeding one shilling per brief sheet.

V. That a certain time be fixed, within which it shall be the duty of the appellant, or his agent, to make such application for the printing of the transcript, and that such time be within the space of six calendar months from the arrival of the transcript and the registration thereof, in all matters brought by appeal from her majesty's colonies and plantations east of the Cape of Good Hope, or from the territories of the East India company, and within the space of three months in all matters brought by appeal from any other part of her majesty's dominions abroad; and that in default of the appellant, or his agent, taking effectual steps for the prosecution of the appeal within such time or times respectively, the appeal shall stand dismissed without further order, and that a report of the same be made to the judicial committee by the registrar of the privy council, at their lordships' next sitting.

VI. That whenever it shall be found that the decision of a matter on appeal is likely to turn exclusively on a question of law, the agents of the parties, with the sanction of the registrar of the privy council, may submit such question of law to the lords of the judicial committee, in the form of a special case, and print such parts only of the transcript as may be necessary for the discussion of the same; provided that nothing herein contained shall in any way bar or prevent the lords of the judicial committee from ordering the full discussion of the whole

case, if they shall so think fit; and that in order to promote such arrangements and simplification of the matter in dispute, the registrar of the privy council may call the agents of the parties before him, and having heard them, and examined the transcript, may report to the committee as to the nature of the proceedings.

And her majesty is further pleased to order, and it is hereby ordered that the foregoing rules and regulations be punctually observed, obeyed, and carried into execution, in all appeals or petitions and complaints, in the nature of appeals brought to her majesty, or to her heirs and successors, in council, from her majesty's

colonies and plantations abroad, and from the Channel Islands or the Isle of Man, and from the territories of the East India company, whether the same be from the courts of justice, or from special jurisdiction, other than appeals from her majesty's courts of vice-admiralty, to which the said rules are not to be applied.

Whereof the judges and officers of her majesty's courts of justice abroad, and the judges and officers of the superior courts of the East India company, and all other persons whom it may concern are to take notice, and govern themselves accordingly.

(Signed)

WILLIAM L. BATHURST.

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ORDER IN COUNCIL FOR THE REGULATION OF THE FORM AND TYPE TO BE USED IN THE PRINTING OF THE CASES, RECORDS, AND PROCEEDINGS IN APPEALS AND OTHER MATTERS PENDING BEFORE THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

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AT THE COURT AT WINDSOR CASTLE,

*the 24th day of March, 1871.*

PRESENT :

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL.

WHEREAS there was this day read at the board a representation from the Lords of the judicial committee of the privy council, dated the 20th

January 1871, humbly recommending to her majesty in council that certain rules be established by the authority of her majesty, by and with the



advice of her privy council, to be observed in the form and type used in the printing of all cases, records, and other proceedings in appeals and other matters pending before the judicial committee of the privy council, HER MAJESTY having taken the said representation into consideration, and the schedule of rules hereunto annexed, was pleased, by and with the advice of her privy council, to approve thereof, and to order, and it is hereby ordered, that the same be punctually observed, obeyed, and carried into execution. Whereof the judges and officers of the courts of justice in her majesty's dominions from which an appeal lies to her majesty in council, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

ARTHUR HELPS

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SCHEDULE ANNEXED TO THE  
FOREGOING ORDER.

I. All cases, records, and other proceedings in appeals, or other matters pending before the judicial committee of the privy council, are henceforth to be printed in the form known as DEMY QUARTO, and not in demy folio. as hath heretofore been used.

II. The size of the paper used is to be such that the sheet, when folded, will be

eleven inches in height and eight inches and a half in width.

III. The type to be used in the text is to be pica type, but long primer is to be used in printing accounts, tabular matter, and notes.

IV. The number of lines in each page of pica type is to be forty-seven, each line being five inches and three quarters or 146 millimetres in length.

V. The foregoing rules do not apply to cases now pending in which the printing of the record is begun before the receipt of this order, but in all cases printed after the receipt of this order, the form and type herein prescribed are to be used exclusively.

VI. The price in England for printing 75 copies in the form herein established is to be thirty-eight shillings per sheet (eight pages) of pica, with marginal notes, not including corrections, tabular matter, and other extras.

VII. The form of paper and type of the present order in council, with the pages hereunto annexed, are to serve as a specimen sheet or pattern for the printing of the proceedings before the judicial committee of the privy council.\*

A. H.

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\*Owing to the size of this work the specimen sheet referred to cannot be inserted.

**TABLES OF FEES**  
**PAYABLE TO**  
**COUNSEL AND ATTORNEYS**  
**AND TO BAILIFFS**  
**IN THE**  
**SUPERIOR AND CIRCUIT COURTS,**  
**PROVINCE OF QUEBEC.**



## ADVOCATES' FEES, SUPERIOR COURT.

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IT is hereby ordered, that the following fees be allowed to the counsel, advocates and attorneys practising in the superior court in actions to be instituted, and upon other proceedings to be commenced from and after the day on which the present tariff shall be entered by the prothonotaries of this court in the registers of the same as by law directed; and the tariff of fees for the counsel, advocates and attorneys practising in this court, the original whereof was entered in the registers of the said court, at the city of Quebec, on the twentieth day of July, one thousand eight hundred and fifty-two, is hereby repealed in so far as regards actions to be instituted, and other proceedings to be commenced, from and after the day on which the present tariff shall be so entered in the registers of this court.

### FIRST CLASS ACTIONS CONSIST OF :

1. Personal actions when the value in contest exceeds \$400.
2. Real and mixed actions not otherwise specially provided for.
3. Actions for separation from bed and board, and *en déclaration de paternité*.
4. Proceedings by *mandamus*, *scire facias*, *requête libellée* or *prohibition*, or others, under articles nos. 997 to 1033 of the code of civil procedure, and upon like proceedings.

### SECOND CLASS ACTIONS CONSIST OF :

1. Personal actions when value in contest does not exceed \$400.
2. Actions for separation of property.
3. Actions or petitions *en destitution de tutelle* or *curatelle*.
4. All actions not included in the first class, and not otherwise specially provided for.

## ACTIONS NOT CONTESTED.

*To Plff's Atty.*

	1st. Class.	2nd Class.
1. If the action be settled before the return...	\$18 00	14 00
2. If the action be settled, or if defendant confess judgment on the day of the return, or on the next following juridical day .....	20 00	16 00
3. If the action be settled, or if the defendant confess judgment, after the delay mentioned in the next preceding number, but before plea filed; or inscription for proof, or inscription for final hearing on the merits where no enquête is necessary .....	22 00	18 00
4. If the action be settled after the inscription on the roll for proof, but before the closing of the enquête; or if the action be settled after the inscription for final hearing on the merits, where no enquête is necessary, or if judgment be rendered on such last mentioned inscription.....	25 00	20 00
5. If the action be settled after enquête closed, or if judgment be rendered in such action after enquête.....	30 00	24 00
6. In any of the above cases in which the defendant may have appeared by attorney; to defendant's attorney on actions returned, or on <i>congé défaut</i> .....	6 00	5 00

## ACTIONS CONTESTED.

	PLFF.	DEFT.	PLFF.	DEFT.
	\$ c.	\$ c.	\$ c.	\$ c.
7. If the action be settled after the filing of any plea, other than a plea to the merits and without enquête on such plea, or if the action be dismissed on such plea and without enquête.....	30 00	25 00	25 00	20 00
8. If the action be settled after the filing of a plea to the merits, but before the inscription on the roll for proof, where an enquête is necessary, or before the inscription for final hearing, where no enquête is necessary.....	40 00	30 00	30 00	25 00

ACTIONS CONTESTED—(Continued).	PLFF.	DEFT.	PLFF.	DEFT.
	\$ c.	\$ c.	\$ c.	\$ c.
9. If the action be settled after the inscription on the roll for proof, but before the inscription for final hearing..	50 00	40 00	40 00	35 00
10. If the action be settled after the inscription for final hearing, or if judgment be rendered on such hearing .....	60 00	50 00	50 00	40 00.

## GENERAL RULES.

11. The costs in actions in revendication for movables to be taxed as against the plaintiff according to the value of the property claimed, and as against the defendant according to the value of the property for which judgment is rendered.
12. Hypothecary actions and actions for seigniorial dues where the title of the seignior is not contested, are to be considered in respect of costs as merely personal actions.
13. The costs in actions to account, to be taxed as against the plaintiff, according to the amount demanded, and as against the defendant, according to the amount for which he is accountable.
14. In any action of ejectment, under the lessor and lessee act, not including actions in which either rent is or damages are sued for, (which actions are provided for by statute,) the costs to be as in a personal action, (in the superior court, or circuit court, as the case may be,) for a sum of money equal to the value of the premises leased for the year current at the time of the institution of the action; or, if the lease shall have expired, then for the last year to which the lease extended.
15. In actions of damages for personal wrongs, (except in actions in which the court or jury shall find the damages to be under forty shillings sterling,) the costs to be taxed as of the class to be determined by the final judgment.
16. In actions for sums of money under \$200, instituted by writ of *capias ad respondendum* in the superior court, the costs to be as in actions over \$100 in circuit court.
17. In any case where the defendants sever in their defence, the plaintiff's attorney shall receive, on each additional issue, one-half of the sum which he would have received had there been but one issue; the whole amount to be payable, in equal proportions, by the party or parties to each issue.

## ADDITIONAL FEES.

18. For the second, and every additional copy of the plaintiff's declaration.....	\$ 1 00
19. Affidavit to obtain writ of <i>capias ad respondendum</i> , attachment in revendication, simple attachment before judgment, attachment for rent, <i>certiorari</i> , or other prerogative writ—when affidavit required and action commenced by such process—(this fee not to be allowed for any affidavit referring, in general terms, to the facts set forth in the petition or pleading, in support of which such affidavit is made).....	3 00
20. If a writ of <i>capias ad respondendum</i> , or any writ of attachment against movables be sued out at any time after the institution of the action (affidavit included)—	
To the attorney suing out the same—	
If action of 1st class .....	12 00
If action of 2nd class .....	10 00
21. On any declinatory or dilatory exception, exception to the form, or demurrer, over-ruled,—	
To the plaintiff's attorney .....	8 00
To the defendant's attorney .....	6 00
22. On any other plea, over-ruled, after law issue raised upon it,—	
To the successful party .....	8 00
To the opposite party .....	6 00
23. On any dilatory exception maintained,—	
To the defendant's attorney .....	15 00
To the plaintiff's attorney .....	10 00
24. If the plaintiff be permitted to amend his declaration, after the filing of an exception to the form,—	
To the defendant's attorney .....	7 00
25. If the plaintiff be permitted to amend his declaration, after the filing of a demurrer,—	
To the defendant's attorney .....	10 00
26. For all proceedings on any petition, motion, or rule, not specially provided for, upon which costs are ordered to be paid,—	
To the party to whom costs are awarded.....	3 00
(Same fee, on motion or other proceedings to call in creditors, including affidavits.)	
27. For putting in security for costs,—	
To each attorney.....	3 00

28. For all proceedings respecting the putting in of security, in any case not otherwise provided for,—  
     To each attorney..... \$ 5 00
29. Enquête fee in any contested cause, tried by jury or judge, to counsel (other than attorney of record) filing appearance at, and actually conducting enquête ..... 10 00
30. In cases to be tried by jury,—  
     To each attorney for preparation for factum..... 8 00  
     To each attorney for statement of facts required by article 353 of the code of civil procedure, including copy for adverse party ..... 3 00
31. In every case of trial by jury where a motion is made for a new trial, or in arrest of judgment, or for judgment *non obstante veredicto*, or for nonsuit, where all, or any of these remedies are sought, one fee only to be allowed for the whole of the proceedings in each such case, up to judgment therein,—  
     To each attorney (if action of 1st class)..... 14 00  
     To each attorney (if action of 2nd class)..... 10 00
32. On any hearing on the merits ordered in a contested action,—  
     To each attorney..... 10 00
33. On any re-hearing ordered upon any pleading,—  
     To each attorney..... 6 00
34. On any re-hearing ordered upon any rule or other proceeding not specially provided for,—  
     To each attorney ..... 3 00
35. For all proceedings on a continuance of suit (*reprise d'instance*), by petition or motion,—  
     To the attorney continuing the suit..... 10 00  
     To the attorney of adverse party ..... 5 00
36. Costs as in action of second class, if the continuance of suit be contested, or if it be made by action, and also on proceedings to have judgment declared executory or *jugement commun*,—
37. On every copy of subpoena certified by the attorney. 10
38. Suing out a writ of execution..... 2 00
39. Suing out writ of attachment after judgment if declaration be not contested,—  
     If action of 1st class..... 10 00  
     If action of 2nd class..... 7 00
40. For every garnishee (above 3) ..... 1 00  
     If contested, the costs to be the same as in a contested personal action; the class to be determined by the amount of the judgment against



the garnishee, if the costs be payable by him, and by the amount claimed by the contestation, if the costs be payable by the party contesting the declaration.

41. For all proceedings for a coercive imprisonment or for the imprisonment of any party, or for a writ of possession, or for an order for a sale in consequence of a false bidding, or for the affixing of seals, or for the removal thereof, and for all proceedings on any application either before or after judgment to liberate any person arrested for debt, otherwise than by giving bail, or to obtain possession of property seized, or contesting attachment before judgment, on ground that allegations of affidavit are untrue, or in cases of *rebellion en justice*,—  
 To the attorney of applicant if no cause shewn. \$6 00  
 If cause shewn but without enquête,—  
 To the attorney of applicant..... 10 00  
 To the attorney shewing cause..... 6 00
42. If it be necessary to take evidence on any of the proceedings mentioned in the foregoing number, or upon any preliminary plea, or upon any other incidental proceeding not specially provided for,—  
 To each attorney, an additional fee of ..... 8 00
43. When the proof, in any contested cause, is continued, party bound to proceed not being ready, fee to adverse party (where costs ordered to be paid)..... 2 00
44. For cross-examining every witness over five, on each side, in any contested case ..... 2 00
45. Preparing statement of facts..... 6 00  
 Preparing answer ..... 4 00
46. For the special application required by article 218 of the code of civil procedure..... 6 00
47. To any proof commissioner for performing all services in any case referred to him, not exceeding the examination of three witnesses..... 10 00
48. For each witness above three..... 2 00
49. For all proceedings for bringing to sale the property of minors..... 20 00
50. For prosecuting to judgment a report of distribution not contested..... 10 00
51. For all proceedings upon a contestation of a report of distribution, if the contestation be not withdrawn or acquiesced in, before the inscription for final hearing on the merits, when the amount of the collocation contested is above \$400,—

To the attorney of the party contesting.....	\$18 00
To the attorney of the creditor claiming.....	14 00
52. If the amount of the collocation contested exceed \$200, and do not exceed \$400,—	
To the attorney of the party contesting.....	15 00
To the attorney of the creditor claiming.....	10 00
53. If the amount of the collocation contested exceed \$80, and do not exceed \$200,—	
To the attorney of the party contesting.....	10 00
To the attorney of the party claiming .....	8 00
54. If the amount of the collocation contested do not exceed \$80,—	
To the attorney of the party contesting.....	8 00
To the attorney of the party claiming.....	6 00
55. If the contestation be withdrawn or acquiesced in before the inscription for final hearing on such contestation, one-half of the above fees according to the class.	
56. For all the proceedings after judgment ordering an account to be rendered in any action to account, if the account be acquiesced in without <i>débats</i> ,—	
To each attorney .....	10 00
57. If the account be contested, the costs to be the same as in a contested personal action, the class to be determined by the amount for which the accounting party shall be declared accountable beyond the amount admitted to be due, by the account filed, if the costs be payable by the accounting party ; and by the amount claimed by the <i>débats de compte</i> , if the costs be payable by the <i>oyant compte</i> .	
58. In actions for separation of property or for separation from bed and board,—for all proceedings to liquidate the matrimonial rights of the plaintiff,—	
If not contested, to plaintiff's attorney.....	10 00
If contested, to each attorney.....	20 00
59. For all proceedings to cause a curator to be appointed to a <i>délaissement</i> in any hypothecary action .....	5 00
60. Costs on interventions and incidental cross demands to be the same as on original demands of same class.	
61. For all proceedings on a licitation of one succession or more, after judgment rendered.....	40 00
62. On a disavowal, petition in revocation of judgment, or <i>tierce-opposition</i> , costs to be the same as in original demands of same class.	

On oppositions for payment, not contested,—	
63. If the sum do not exceed \$80.....	\$ 8 00
64. If it exceed \$80, and do not exceed \$200.....	10 00
65. If it exceed \$200, and do not exceed \$400.....	14 00
66. If it exceed \$400 .....	16 00
67. If contested, costs to be same as in personal action for the same amount in the superior court or cir- cuit court, as the case may be, excepting that the costs upon the contestation of any opposition for a sum not exceeding \$60 shall be the same as in contested actions in the circuit court, above \$60 and under \$100.	
68. Oppositions to annul, to withdraw, or to secure charges, or any other opposition, if not contested.	15 00
69. If contested, costs to be as in actions of the second class.	

## RATIFICATIONS OF TITLE.

For all proceedings to obtain a sentence of ratifica- tion of title,—	
70. To the petitioner's attorney, if purchase money do not exceed \$400.....	14 00
71. If purchase money exceed \$400, and do not exceed \$1000, or if the consideration be not of a pecuniary nature .....	20 00
72. If purchase money exceed \$1000... ..	25 00
73. Fees on oppositions to sentence of ratification of title and on contestations thereof to be the same as on oppositions to executions and contestations thereof.	

## EXPROPRIATIONS.

74. For all proceedings, on behalf of a proprietor expro- priated, to obtain an order for the payment over of the moneys,—	
If the value of the property expropriated exceeds \$400.....	16 00
If it does not exceed \$400.....	12 00
For opposing successfully the homologation of a report of commissioners, where a written appear- ance for that purpose shall have been put in and allowed,—	
Where the value of the property respecting which the objection arises exceeds \$400.....	40 00
Where it does not exceed.....	30 00

## WRITS OF CERTIORARI.

75. If settled before the filing of such writ,—	
To petitioner .....	\$10 00
If writ refused, to party shewing cause .....	6 00
76. If not settled before the filing of such writ,—	
To petitioner.....	16 00
To respondent.....	10 00

COMMISSIONS ROGATOIRES AND ORDERS FOR THE  
EXAMINATION OF WITNESSES.

77. To the attorney suing out the same.....	5 00
78. For the drawing of interrogatories or cross-interrogatories .....	4 00
79. For taking instructions, examining the papers, &c., &c., to each.....	5 00
80. For examining or cross-examining any witness.....	2 00
81. To the attorney prosecuting the execution of the writ or order, an additional fee of.....	4 00

## PROBATES, HABEAS CORPUS, Etc.

82. For all fees to obtain probate of a will or writ of habeas corpus without enquête.....	10 00
If enquête takes place, an additional fee of.....	8 00
83. For all fees to obtain appointment of tutors to minors, or curator to person or property, or for removal of interdiction, or for emancipation or any other such proceeding,—	
If not contested.....	5 00
If contested,—	
To petitioner's attorney.....	15 00
To adverse party .....	12 00
If enquête necessary on such contestation...	8 00
On petition of curator, &c., to render account, including notices .....	4 00

## EVOCATIONS.

84. If maintained, the costs to be the same as in actions of the second class, which costs shall include all services in both courts,—	
If rejected, to each attorney.....	5 00

IMPROBATION—(*Inscription en faux.*)

85. To the attorney for direction for drawing a power of attorney .....	4 00
86. Attendance at drawing up of descriptive statement of document impugned.. .....	4 00

87. If settled before articles of improbation are filed, each motion required by the rules of practice, and also the declaration to be made by the defendant in improbation as to whether he intends to avail himself of the document impeached, shall be taxed as a motion according to the foregoing No. 26..... \$3 00
88. If settled after the articles of improbation are filed, but before the answer, the fees of the attorney of the plaintiff in improbation shall be as in No. 1 of the table, and the fees of the attorney of the defendant in improbation shall be as in No. 6 of the table, and if the settlement take place at any subsequent stage of the proceedings, or if judgment be rendered on such improbation, the costs shall be as in the original demand, if settled at a like stage.

## CASES IN REVIEW.

89. Under \$400,—  
If settled before hearing, to each attorney ..... 15 00
90. After hearing, to each attorney ..... 30 00
91. In cases of \$400 or over,—  
If settled before hearing..... 20 00  
After hearing..... 40 00
92. Factum in review to each party..... 6 00
- On appeal from Trinity House or other tribunal, to superior court, if contested,—  
Attorney for appellant..... 20 00  
Attorney for respondent..... 12 00
- If not contested,—  
Attorney for appellant ..... 12 00
- QUEBEC, 30th December, 1868.

W. C. MEREDITH, Chief Justice, S.C.  
CHARLES MONDRELET, J.  
E. SHORT, J.S.C.  
A. POLETTE, J.C.S.  
A. STUART.  
J. A. BERTHELOT, J.C.S.  
T. J. J. LORANGER, J.C.S.  
L. V. SICOTTE, J.C.S.  
F. G. JOHNSON, J.S.C.  
J. T. TASCHEREAU, J.C.S.  
JOS. N. BOSSÉ, J.  
J. MAGUIRE, J.S.C.  
F. W. TORRANCE, J.S.C.

Published in open court, registered and entered at Quebec the  
30th day of December, 1868.

FISKE & BURROUGHS, P.S.C.

# BAILIFFS' FEES,

## SUPERIOR COURT.

[T is ordered, that the following fees be allowed to the bailiffs of this court, for services to be performed, from and after the day on which the present tariff shall be entered by the prothonotaries of this court in the registers of the same, as by law required; and the tariff of fees for the bailiffs of this court, the original whereof was entered in the registers of the said court, at the city of Quebec, on the twentieth day of July, one thousand eight hundred and fifty-two, is hereby repealed, in so far as regards services to be performed by the bailiffs of this court, from and after the day on which the present tariff shall be entered in the registers of this court.

### TO THE BAILIFFS.

For service of any notice, or other paper, upon an attorney as such, including return.....	£0	1	0
For the service of a writ of subpoena on each witness, including return.....	0	1	6
For the service of any writ of summons, or other writ or paper, not otherwise provided for, including return.....	0	2	6
For the service of any writ, or other document required by law to be served personally, including return..	0	3	0
For all proceedings on the arrest of any person, including return, when required.....	0	12	6
For the seizure of real estate, or the seizure or attachment of movables, including original inventory, and copies for the debtor, and for the guardian to movables.....	0	15	0

If more than one lot of land included in any seizure, for each additional lot.....	£0 2 6
For every publication, in both languages, at the church-door, not otherwise provided for, including notices, affixing same, &c.....	0 2 6
For the sale of real or personal property, including minutes of sale and copy.....	0 12 6
If more than one lot of land be sold under the same writ, for each additional lot sold.....	0 2 6
For a return of no goods or no land, including copy if required.....	0 2 6
For a return of <i>rébellion à justice</i> and copy.....	0 5 0
For all services executing a writ of possession, including return .....	0 12 6
For <i>recors</i> when required.....	0 3 9
If <i>recors</i> necessarily employed more than half a day, at the rate of 5s. per day.	
For the appointing of a new guardian when legally required so to do, including return, copy, &c.....	0 5 0
For the posting and publication of <i>ex parte</i> notices for a ratification of title, including return, &c.....	1 0 0
For the attendance on jury trials under the direction of the sheriff, <i>per diem</i> (when required).....	0 7 6
In any case in which in consequence of more than one person being interested in the property seized or sold, an additional copy or copies of the inventory is or are necessary, for each extra copy so required .....	0 2 6
If in consequence of the quantity of goods to be seized or sold, a bailiff is necessarily occupied more than one day in making such seizure or sale, the additional time when certified by the sheriff, to be charged at the rate of twelve shillings and six pence per day.....	0 12 6
If any paper to be prepared by a bailiff, excepting minutes of seizure of real estate, necessarily contains more than 300 words, the additional words to be charged at the rate of five pence per hundred words, in addition to the fees hereinbefore allowed.	
Mileage on the service or execution of a writ of process of any kind, at the rate of one shilling and three pence per mile, without any further charge for mileage on any other process to be served on the same party then in the hands of the bailiff, and which shall be or might have been served at the same time (whether such process shall have been sued out by the same	

party or by any other) and without any charge for mileage in returning, but exclusive of sums paid at tollgates, ferries and bridges. No mileage to be allowed, unless the distance exceed one mile.

QUEBEC, 30th December, 1868.

W. C. MEREDITH, Chief-Justice, S.C.  
 CHARLES MONDELET, J.  
 E. SHORT, J.S.C.  
 A. POLETTE, J.C.S.  
 A. STUART.  
 J. A. BERTHELOT, J.C.S.  
 T. J. J. LORANGER, J.C.S.  
 L. V. SICOTTE, J.C.S.  
 F. G. JOHNSON, J.S.C.  
 J. T. TASCHEREAU, J.C.S.  
 JOS. N. BOSSÉ, J.  
 J. MAGUIRE, J.S.C.  
 F. W. TORRANCE, J.S.C.

Published in open court, registered and entered at Quebec the  
 30th day of December, 1868.

FISKE & BURROUGHS, P.S.C.



# ADVOCATES' FEES,

## CIRCUIT COURT.

IT is hereby ordered that the following fees be allowed to the counsel, advocates and attorneys practising in the circuit court in actions to be instituted, and upon other proceedings to be commenced from and after the day on which the present tariff shall be entered by the clerk of this court in the registers of the same as by law directed; and the tariff of fees for counsel, advocates and attorneys practising in this court, the original whereof was entered in the registers of the superior court, at the city of Quebec, on the twentieth day of July, one thousand eight hundred and fifty-two, is hereby repealed in so far as regards actions to be instituted, and other proceedings to be commenced, from and after the day on which the present tariff shall be so entered in the registers of this court.

## CIRCUIT COURT.

*In Cases over \$60.*

### ACTIONS NOT CONTESTED.

	1st Class over \$100.		2d Class over \$60 to \$100.	
	\$ c.	\$ c.	\$ c.	\$ c.
1. If the action be settled before the return.....	10 00	0 00	6 00	0 00
2. If the action be settled, or if defendant confess judgment on the day of the return, or on the next following judicial day .....	12 00	0 00	8 00	0 00

## ACTIONS NOT CONTESTED—(Continued).

	1st Class over \$100.		2d Class over \$60 to \$100.	
	\$ c.	\$ c.	\$ c.	\$ c.
3. If the action be settled, or if the defendant confess judgment, after the delay mentioned in the next preceding number, but before plea filed; or inscription for enquête, or inscription for final hearing on the merits where no enquête is necessary.....	15 00	0 00	10 00	0 00
4. If the action be settled after the inscription on the roll for proof, but before the closing of the enquête; or if the action be settled after inscription for hearing on the merits, where no enquête is necessary, or if judgment be rendered on such last mentioned inscription.....	16 00	0 00	12 00	0 00
5. If the action be settled after enquête closed, or if judgment be rendered in such action after enquête.....	20 00	0 00	16 00	0 00
6. In any of the above cases in which the defendant may have appeared by attorney to defendant's attorney on actions returned, or on <i>congé-défaut</i> .....	4 00	0 00	3 00	0 00

## ACTIONS CONTESTED.

	Pfff.	Defdt.	Pfff.	Defdt.
	\$ c.	\$ c.	\$ c.	\$ c.
7. If the action be settled after the filing of any plea, other than a plea to merits and without enquête on such plea, or if the action be dismissed on such plea without enquête.....	20 00	15 00	12 00	10 00

## ACTIONS CONTESTED—(Continued).

	Plff.	Defdt.	Plff.	Defdt.
	\$ c.	\$ c.	\$ c.	\$ c.
If there be an enquête on any such plea, an additional fee of \$4 to each attorney.				
8. If the action be settled after the filing of a plea to the merits, but before the inscription on the roll for proof, where an enquête is necessary, or before the inscription for final hearing, where no enquête is necessary .....	24 00	20 00	15 00	12 00
9. If the action be settled after the inscription on the roll for proof, but before the inscription for final hearing...	28 00	22 00	18 00	14 00
10. If the action be settled after the inscription for final hearing, or if judgment be rendered on such hearing...	30 00	24 00	20 00	16 00

In any case where there are more defendants than one and where they sever in their defence;—to plaintiff's attorney in each additional issue one half of the sum he would have received had there been but one issue, the whole amount payable in equal proportions by the party or parties to each issue.

The costs in actions to account to be taxed as against the plaintiff according to the amount demanded, and as against the defendant according to the amount for which he is accountable.

In actions of damages for personal wrongs (excepting in actions in which the court shall find the damages to be under forty shillings sterling), the costs to be taxed as of the class to be determined by the final judgment.

In any action of ejectment under the lessor and lessee's act, not including actions in which either rent is, or damages are, sued for (which actions are provided for by statute), the costs to be as in personal actions for a sum of money equal to the value of the premises leased for the year current at the time of the institution of the action, or, if the lease shall have expired, then for the last year to which the lease extended.

In suits in this court, under \$100, for fees of office, duties, rents, revenue or sums of money payable to the crown, or which relate to any titles to lands or tenements, to seigniorial or other annual rents, and such like matters and things, whereby rights in future may be bound, and in hypothecary and mixed actions, under \$100, there shall, except when otherwise expressly provided for, be the same fees as in merely personal actions, according to the amount or value of the thing awarded, unless there be an evocation by either of the parties; and then the fees on the evocation shall be the same as in actions of the second class in the superior court, which costs shall include all services in both courts.

## ADDITIONAL FEES IN ALL CASES OVER \$60.

	1st class over \$100.	2d class over \$60. to \$100.
11. For the second and every additional copy of the plaintiff's declaration.....	\$ c. 1 00	\$ c. 1 00
12. For affidavits to obtain simple attachment before judgment, attachment in reversion or attachment for rent when affidavit required, and action commenced by such process; this fee not to be allowed on any affidavit referring in general terms to the facts set forth in the petition or pleading in support of which such affidavit is made....	2 00	2 00
13. If any writ of attachment against movables be sued out at any time after the institution of the action,— To the attorney suing out the same....	6 00	4 00
14. On every declinatory or dilatory exception or exception to the form and on every demurrer, overruled,— To the plaintiff's attorney .....	4 00	2 00
To the defendant's attorney.....	4 00	2 00
15. On any other plea overruled, after law issue raised upon it,— To the attorney of the successful party	4 00	2 00
To the opposite party.....	4 00	2 00
16. To the defendant's attorney on every dilatory exception maintained.....	5 00	4 00
To the plaintiff's attorney.....	3 00	2 00
The fees allowed in the foregoing numbers 14 and 16 are exclusive of the fee allowed	22	

- when the enquête takes place upon a preliminary plea.
17. If the plaintiff be permitted to amend his declaration after the filing of an exception to the form,—  
     To the defendant's attorney..... \$2 00 ... \$2 00
18. If the plaintiff be permitted to amend his declaration after filing a demurrer,—  
     To the defendant's attorney..... 4 00 ... 4 00
19. For all proceedings on any petition, motion or rule, not specially provided for, upon which costs are ordered to be paid,—  
     To the party to whom the costs are awarded..... 2 00 ... 1 00  
     Same fee on motion or other proceeding to call in creditors, including affidavits.  
     When the enquête in any contested case is continued, party bound to proceed not being ready,—  
     To adverse party..... 1 00 ... 1 00
20. For all proceedings respecting the putting in of security,—  
     To each attorney..... 2 00 ... 1 00
21. On any rehearing upon the merits ordered by the court in any contested cause,—  
     To each attorney..... 5 00 ... 3 00  
     On any rehearing ordered upon any pleading,—  
     To each attorney..... 3 00 ... 2 00  
     On any rehearing ordered upon any rule or other proceeding not specially provided for,—  
     To each attorney..... 2 00 ... 1 00
22. For all proceedings in continuance of suit (*en reprise d'instance*), by petition or motion of the *reprenant l'instance*,—  
     To the attorney continuing the suit.... 5 00 ... 4 00  
     To the attorney of the opposite party.. 3 00 ... 2 00  
     Costs as to the original action if the continuance of the suit (*reprise d'instance*) be contested, or if it be made by action and also on proceedings by action to have judgment declared executory or *jugement commun*.
23. On every copy of subpoena certified by attorney..... 0 10 ... 0 10
24. For all proceedings on suing out writ of execution..... 1 00 ... 1 00

25. For all proceedings on suing out a writ of attachment after judgment, if the declaration of the garnishee be not contested... \$5 00 ... 3 00  
 And for every additional garnishee above the number of three..... 1 00 ... 0 50  
 If contested the costs to be the same as in a contested personal action; the class to be determined by the judgment against the garnishee, if the costs be payable by the garnishee, and by the amount claimed by the contestation, if the costs be payable by the party contesting the declaration.
26. For all proceedings for coercive imprisonment, or for the imprisonment of any party, or for a writ of possession, or on any application to obtain possession of goods seized, or to contest attachment on ground that allegations of affidavit are untrue,—  
 To the attorney of the applicant, if no cause shewn..... 4 00 ... 3 00
27. If cause shewn, but without enquête,—  
 To the attorney of the applicant..... 6 00 ... 4 00  
 To the attorney shewing cause..... 4 00 ... 3 00
28. If an enquête be necessary upon any proceeding mentioned in the foregoing numbers 26 and 27, or on any preliminary plea, or upon any other incidental proceeding there shall be allowed to each attorney..... 6 00 ... 4 00
29. For prosecuting to judgment a report of distribution not contested..... 5 00 ... 3 00
30. For all proceedings upon a contestation of a report of distribution which shall not be withdrawn or acquiesced in, before the inscription for final hearing on the merits, when the amount of the collocation contested exceeds \$100,—  
 To the attorney contesting..... 10 00 ... 0 00  
 To the attorney of the party claiming.. 8 00 ... 0 00
31. When the amount of the collocation contested does not exceed \$100,—  
 To the attorney contesting ..... 0 00 ... 6 00  
 To the attorney of the party claiming.. 0 00 ... 4 00
32. If the contestation be withdrawn or acquiesced in, before the inscription for final hearing on the merits, one-half of the above fees.

33. For all proceedings after judgment ordering account to be rendered in any action to account, if the account be not contested,—

To each attorney..... \$6 00 ... \$4 00

34. If the account be contested, the costs to be the same as in a contested personal action, the class to be determined by the amount for which the *rendant compte* shall be declared accountable beyond the amount admitted to be due by the account filed if the costs be payable by the *rendant compte*; and by the amount claimed by the *débats de compte*, if the costs be payable by the *oyant compte*.

35. For all proceedings to cause a curator to be appointed to the *délaissement*, in a hypothecary action.....

3 00 ... 3 00

And to the curator..... 3 00 ... 3 00

#### INTERVENTIONS, ETC.

36. Costs on interventions and incidental cross demands to be the same as on original demands of the same class.

#### OPPOSITIONS FOR PAYMENT

37. If not contested,—

If the sum due be less than \$100..... 0 00 ... 4 00

If the sum due be \$100 or over..... 6 00 ... 0 00

38. If contested, costs to be the same as on an original demand for the same amount, excepting that the contestation in the appealable side of the court, of any opposition for a sum not exceeding \$60, shall be the same as in a contested action for a sum exceeding \$60 and under \$100.

39. On any opposition to withdraw or to annul not contested.....

6 00 ... 0 00

40. If contested, the same fees as in the original action.

#### COMMISSIONS-ROGATOIRES AND ORDERS (IN BOTH CLASSES) FOR THE EXAMINATION OF WITNESSES.

41. To the attorney suing out the same..... \$2 00 ... 0 00

42. For drawing interrogatories or cross-interrogatories,—  
     To the attorneys engaged where the writ or order is executed..... \$3 00 ... 0 00
43. For taking instructions, examining papers, &c., &c.,—  
     To each attorney..... 4 00 ... 0 00
44. For the examination in chief or cross-examination of each witness..... 1 00 ... 0 00
45. To the attorney prosecuting the execution of any such writ or order, an additional fee of ..... 3 00 ... 0 00
- To proof commissioner for all services in any case referred to him not exceeding the examination of three witnesses..... 8 00 ... 0 00
- For each witness above three..... 1 00 ... 0 00

## APPEALS.

46. On an appeal to the circuit court, if contested,—  
     To the appellant's attorney..... 14 00 ... 0 00  
     To the respondent's attorney..... 10 00 ... 0 00
47. If not contested,—  
     To the attorney of appellant..... 10 00 ... 0 00
48. If appeal be dismissed or settled before final hearing on the merits,—  
     To the attorney of appellant... .. 7 00 ... 0 00  
     To the attorney of respondent..... 4 00 ... 0 00

## CONTESTED ELECTIONS, CIRCUIT COURT

49. On contestation of elections of municipal officers or school commissioners, costs to be as in action between \$100 and \$200.

## MISCELLANEOUS.

50. Fees respecting writs of certiorari, and on proceeding to obtain probate of any will, and for appointment of tutor to minors, curator to any person or property or otherwise, or for removal of interdictions, or emancipation, same in circuit court as in superior court.

## IMPROBATIONS.

51. If settled before the articles of improbation are filed, each motion required by the rules of practice, and also the declaration



to be made by the defendant in improbation, as to whether he intends to avail himself of the document impeached, shall be taxed as a motion according to the foregoing No. 19.

52. If settled after the articles of improbation are filed, but before answer, the fees of the attorney of the plaintiff in improbation and the fees of the defendant in improbation shall be as No. 1 of this same table; and if the settlement take place at any subsequent stage of the proceedings, or if judgment be rendered, the costs shall be the same as on the original demand at a like stage.

It is ordered that the following fees be allowed to the Attorneys in appealable cases in the Circuit Court.

NOTE.—*The following items, not forming part of the Tariff of 1852, are not abrogated by that of the 30th December, 1868.*

	£	s.	d.
1. For any statement ( <i>articulation</i> ) of facts.....	1	0	0
2. For the answer thereto.....	0	15	0
3. When the enquête in any contested case shall be continued in consequence of the party bound to proceed not being ready—to the adverse party.....	0	5	0
4. It is ordered that the attorney's fee taxable in each of the cases specified in the 75th and 78th sections of the Judicature Act shall be.....	1	10	0

#### FEES OF COMMISSAIRES ENQUÊTEURS.

5. Upon every case referred to him..... 1 10 0  
Which said fee shall be deposited in the hands of the clerk at the time of making the motion of reference to the *commissaire enquêteur*.
6. For every witness over six, examined in any case... 0 5 0  
Which said last mentioned fee shall be paid to the commissioner before the inscription of the cause for hearing on the merits, and his certificate of such payments shall be filed of record before the hearing of the case.

*The fees so paid shall form part of the costs to be taxed*

against the party who by the final judgment shall be made liable to pay the same.

Montreal, 24th December, 1857.

EDWD. BOWEN, Chief Justice, S. C.  
 W. C. MEREDITH, J. S. C.  
 A. N. MORIN, J. C. S.  
 J. CHABOT, J. C. S.  
 J. C. BRUNEAU, J. S. C.  
 J. S. MCCORD, J. S. C.  
 CHS. D. DAY, J. S. C.  
 J. SMITH, J. S. C.  
 CHARLES MONDELET.  
 W. BADGLEY, J. S. C.  
 W. POWER, J. S. C.

Registered and entered at Quebec, this 4th January, 1858.

BURROUGHS & FISET, P. S. C.

CASES OF \$60 OR UNDER.—TO THE ATTORNEY.

	1st class actions, \$60 or under, but above \$40.	2d class actions, \$40 or under, but above \$25.	3d class actions, \$25 or under.
1. On all proceedings in actions settled before return (except those on which additional fees are hereinafter allowed),—	\$ c.	\$ c.	\$ c.
To the plaintiff's attorney.....	2 50	1 50	1 00
2. On all proceedings (except as aforesaid) in actions settled after return, and before contestation, or in which judgment shall be given on confession, or by default, or <i>ex parte</i> without enquête, that is to say, without the examination in court of any witness or party,—			
To the plaintiff's attorney.....	4 00	2 00	1 50
And to the defendant's attorney on actions returned or on <i>congé défaut</i> .....	2 00	1 50	1 00
3. On the same, if the judgment be given by default or <i>ex parte</i> , but with enquête,—			
To the plaintiff's attorney.....	5 00	3 00	2 00
And to the defendant's attorney..	2 00	1 50	1 00

CASES OF \$60 OR UNDER—*Continued.*

	1st class actions, \$60 or under. but above \$40.	2d class actions, \$40 or under. but above \$25.	3d class actions, \$25 or under.
4 On the same, in actions settled or dis- continued after contestation,—	\$ c.	\$ c.	\$ c.
To the plaintiff's attorney.....	5 00	3 00	2 00
And to the defendant's attorney..	4 00	3 00	1 50
5. On the same, when the judgment shall be given after contestation,—			
To the plaintiff's attorney.....	6 00	3 50	2 50
And to the defendant's attorney..	5 00	3 00	1 50
6. In all hypothecary or mixed actions settled before return, an additional fee,—			
To the plaintiff's attorney, \$3.			
7. If settled after enquête, or if judg- ment be rendered, an additional fee,—			
To the plaintiff's attorney, \$4.			
8. In actions of damages for personal wrongs (excepting in actions in which the court shall find the damages to be under forty shillings sterling), the costs to be taxed as of the class to be determined by the final judgment unless ordered by final judgment.			
9. On each opposition to withdraw, to annul, or to secure charges, or other oppositions or interventions not con- tested.....	3 00	2 50	1 50
10. On all oppositions (excepting opposi- tions for payment) and interven- tions, when contested, the same fees as in the original actions to which the same shall be incident.			
11. On oppositions for payment, if con- tested, same fees as in original actions for a like sum.			
12. On simple attachment after judgment uncontested .....	2 00	1 50	1 00

CASES OF \$60 OR UNDER—*Continued.*

	1st class actions, \$60 or under, but above \$40.	2d class actions, \$40 or under, but above \$25.	3d class actions, \$25 or under.
1. If declaration of garnishee be con- tested, same fees as in original actions for a like sum.	\$ c.	\$ c.	\$ c.
2. On suing out any writ of attachment for rent, attachment in revendica- tion, or simple attachment before judgment, or on any special de- claration required by the court,— To plaintiff's attorney.....	2 00	1 50	1 00
3. For each copy, more than one of any declaration, petition, intervention, or opposition .....	0 75	0 50	0 25
4. In all incidental cross-demands, the same fees that are allowed in ori- ginal actions for a like sum.			
5. For each plea required to be in writing ordered by the court, including copy,— To the defendant's attorney.....	1 50	1 00	0 50
6. On each proceeding to continue the suit, or to declare a judgment ex- ecutory, or for coercive imprison- ment, or in any case of <i>rébellion à</i> <i>justice</i> , or to set attachment aside on ground that allegations of affi- davit are untrue,— To the attorney prosecuting the same if contested.....	4 00	3 00	2 00
If uncontested.....	3 00	2 00	1 00
And to the attorney resisting the application .....	3 00	2 00	1 50
7. On a commission for the examination of witnesses, and on all proceedings relative thereto,— To the attorney suing out the same .....	3 00	2 00	1 50
And to the attorney of the oppo- site party .....	3 00	2 00	1 50

CASES OF \$60 OR UNDER—*Continued.*

	1st class actions, \$60 or under, but above \$40.	2d class actions, \$40 or under, but above \$25.	3d class actions, \$25 or under.
	\$ c.	\$ c.	\$ c.
To the attorney employed by either party to attend to the execution of such commission...	3 00	2 00	2 00
20. On any demurrer maintained.....	2 00	1 50	1 50
21. When the enquête in any contested case is continued, party bound to proceed not being ready,— To adverse party .....	1 00	0 75	0 50

QUEBEC, 30th December, 1868.

W. C. MEREDITH, Chief Justice, S.C.

CHARLES MONDELET, J.

E. SHORT, J.S.C.

A. POLETTE, J.C.S.

A. STUART.

J. A. BERTHELOT, J.C.S.

T. J. J. LORANGER, J.C.S.

L. V. SICOTTE, J.C.S.

F. G. JOHNSON, J.S.C.

J. T. TASCHEREAU, J.C.S.

JOS. N. BOSSÉ, J.

J. MAGUIRE, J.S.C.

F. W. TORRANCE, J.S.C.

Published in open court, registered and entered at Quebec the  
30th day of December, 1868.

FISKE & BURROUGHS, P.S.C.

# BAILIFFS' FEES,

## CIRCUIT COURT

IT is hereby ordered that the following fees be allowed to the bailiffs of this court for services to be performed from and after the day on which the present tariff shall be entered by the clerks of this court in the registers of the same as by law directed; and the tariff of fees for the bailiffs of this court, the original whereof was entered in the registers of the superior court, at the city of Quebec, on the twentieth day of July, one thousand eight hundred and fifty-two, is hereby repealed in so far as regards services to be performed by the bailiffs of this court from and after the day on which the present tariff shall be so entered in the registers of this court.

### IN APPEALABLE CASES.

For the service of any writ of subpoena or other writ or paper not otherwise provided for, including return.....	£0	1	3
For the service of any writ of summons and return....	0	2	6
For the service of any writ or other document required by law to be served personally, including return.....	0	2	6
For all proceedings on the arrest of any person, including return.....	0	10	0
For the seizure and attachment of movables, including original inventory and copies for debtor and guardian.....	0	12	6
For every publication in both languages at the church door, including notices ( <i>affiches</i> ), affixing same, &c.	0	2	6
For the sale of goods and chattels, including minutes of sale and copy.....	0	7	6
For return of no goods, including copy if required....	0	2	6
For a return of <i>rébellion à justice</i> and copy.....	0	5	0
For all services executing a writ of possession, including <i>procès-verbal</i> .....	0	10	0
For a <i>recors</i> when required.....	0	2	0
If <i>recors</i> necessarily employed more than half a day, at the rate of 3s. 4d. per day.			

For the appointment of a new guardian when legally required so to do, including return, copy, &c..... £0 5 0

In any case in which in consequence of more persons than one person being interested in the property seized or sold an additional copy or copies of the inventory is or are necessary, for each extra copy so required ..... 0 2 0

If any paper to be prepared by a bailiff necessarily contains more than 300 words, the additional words to be charged at the rate of four pence per hundred words, in addition to the fees herein-before allowed.

Mileage on the service or execution of a writ or of process of any kind, at the rate of one shilling per mile, as heretofore, without any further charge for mileage on any other process to be served on the same party then in the hands of the bailiff, and which shall be or might have been served at the same time (whether such process shall have been sued out by the same party or by any other) and without any charge for mileage in returning, but exclusive of sums paid at toll-gates, ferries and bridges. No mileage to be allowed, unless the distance exceed one mile.

Quebec, 30th December, 1868.

#### NON-APPEALABLE CASES.

	1st Class. Actions not ex- ceeding £15, but above £10 currency.	2nd Class Actions £10 or under, but above £6 5s.	3rd Class. Actions £6 5s. or under.
Mileage on the service or execution of a writ or of process of any kind at the rate of one shilling per mile, without any further charge for mileage on any other process to be served on the same party, then in the hands of the bailiff, and which shall be or might have been served at the same time (whether such pro- cess shall have been sued out by the same party or by any	£ s. d.	£ s. d.	£ s. d.

## NON-APPEALABLE CASES—(Continued).

	1st Class. Actions not ex- ceeding £15, but above £10 currency.	2nd Class. Actions £10 or under but above £6 6s.	3rd Class. Actions £6 6s. or under.
	£ s. d.	£ s. d.	£ s. d.
other) and without any charge for mileage in returning, but exclusive of sums paid at toll- gates, ferries or bridges.			
No mileage to be allowed unless the distance exceed one mile.			
For the service certificate or return of such writ or process.....	0 1 3	0 1 3	0 1 3
For the seizure of goods and chat- tels and all incidental trouble but exclusive of mileage.....	0 7 6	0 5 0	0 5 0
For his <i>recors</i> (when required).....	0 1 8	0 1 8	0 1 8
For the sale of goods and chattels exclusive of mileage.....	0 7 6	0 5 0	0 5 0
For publishing the notice of the sale.	0 2 0	0 2 0	0 2 0
For the service of any notice, and the certificate and return.....	0 1 0	0 1 0	0 1 0

Quebec, 30th December, 1868.

W. C. MEREDITH, Chief Justice, S.C.

E. SHORT, J.S.C.

A. POLETTE, J.C.S.

A. STUART.

J. A. BERTHELOT, J.C.S.

T. J. J. LORANGER, J.C.S.

L. V. SICOTTE, J.C.S.

F. G. JOHNSON, J.S.C.

J. T. TASCHERRAU, J.C.S.

JOS. N. BOSSÉ, J.C.S.

J. MAGUIRE, J.S.C.

F. W. TORRANCE, J.S.C.





TARIFF OF FEES  
EXIGIBLE BY  
COUNSEL AND OFFICERS  
OF THE COURT  
IN THE  
COURT OF QUEEN'S BENCH,  
(APPEAL SIDE)  
PROVINCE OF QUEBEC.

[REDACTED]

# TARIFF OF FEES.

## QUEEN'S BENCH—APPEAL SIDE.

PROVINCE OF QUEBEC.

ORDER OF JULY TERM, 1850.

**I**T is ordered by the court here, that the several fees herein-  
after specified be allowed to, and taken by, the counsel and  
attorneys, and other officers of this court, for the several services  
hereinafter mentioned, and that no other fees be allowed or  
taken for the said services, or for any other services, without  
the order of this court in this behalf made.

### FEES TO COUNSEL AND ATTORNEYS IN APPEALS FROM THE SUPERIOR COURT.

Attendance examining the record and proceedings of the court below, and taking instructions to prose- cute, or defend in appeal.....	£1	0	0
Præcipe for writ of appeal or writ of error, and lodging it in the office.....	0	5	0
Attendance to obtain writ.....	0	5	0
Engrossing copy of writ, to be served on respondent or defendant in error.....	0	2	6
Drawing and engrossing notice of putting in security on appeal .....	0	5	0
Copy of notice to be served.....	0	2	6
Attendance when security is put in.....	0	5	0
Examining recognizance in appeal.....	0	11	8
Attendance at the return of the writ.....	0	7	6
Drawing appearance, and attendance to file it.....	0	5	0
Every attendance at the office, to file pleadings, or cases, or to obtain rules.....	0	5	0
Attendance and making abstract of the record.....	2	6	8
Drawing and engrossing reasons of appeal, or assign- ment of errors.....	1	0	0
Copy for the respondent or defendant in error.....	0	10	0
Drawing and engrossing answer to reasons or joinder in error.....	1	0	0

Copy for the appellant or plaintiff in error.....	£0	10	0
Drawing case.....	3	10	0
Engrossing copy for printer, correcting proof-sheet....	1	3	4
Attendance, and inscribing cause for hearing .....	0	10	0
Drawing and engrossing notice of inscription.....	0	5	0
Copy to be served.....	0	2	6
Copy of every rule to be served on the adverse party.	0	2	6
Every necessary attendance in court.....	0	7	6
Every motion in court.....	0	7	6
Every necessary attendance at the office.....	0	5	0
Fee on the argument of every point of law on motion.	0	11	8
Ditto on every law issue.....	1	3	4
Ditto on the merits of a cause, whether on one or more days.....	2	6	8
Attendance, and remitting the record to the court below.....	0	16	8
Drawing and engrossing bill of costs.....	0	12	6
Copy for adverse party and attendance at taxation....	0	7	6

## TO THE BAILIFFS OF THE COURT,

For service of every writ of appeal, notice or rule, and certificate thereof.....	0	5	0
For mileage, the accustomed rate.			

(Signed)

J. STUART, C.J.  
J. R. ROLLAND, J. B. R.  
PHI. PANET, J. B. R.  
T. C. AYLWIN, J.

Quebec, 12th July, 1850.

FEES TO COUNSEL AND ATTORNEY IN APPEALS  
FROM THE CIRCUIT COURT.

1. Upon discontinuance or dismissal of the appeal,  
after filing of the petition in appeal, but before  
hearing on the merits,—  
To appellant's attorney..... £3 10 0  
To respondent's attorney..... 2 15 0
2. Upon abandonment of the appeal if the petition in  
appeal has not been produced,—  
To appellant's attorney..... 2 10 0  
To respondent's attorney..... 2 10 0

3. Upon final judgment if the respondent has made default,—			
To appellant's attorney.....	£5	0	0
4. Upon final judgment if the respondent has appeared,—			
To appellant's attorney.....	7	0	0
To respondent's attorney.....	5	0	0
5. For attendance at court to make any motion or other demand in writing, or to reply thereto.....	0	7	6
6. For making every such motion or demand.....	0	7	6
7. For every copy of an interlocutory order or rule pronounced in court to be signified.....	0	2	6
8. For each extra copy required to be served (when there is more than one respondent) of the petition in appeal, including the notice and copy of the appeal-bond to be served therewith, and for each copy of the petition for the judges.....	0	5	0
9. For obtaining rule against clerk of circuit court, in case of neglect or refusal on his part to transmit the record.—Arts. 1127, 1151 C. C. P.	0	12	6
10. For printing of each factum when required (to the number of twenty-five copies to be deposited with clerk of appeals).....	2	10	0

## TO THE BAILIFFS.

For each service.....	0	3	0
Mileage to be charged according to the tariff of the superior court.			

## TRAVELLING EXPENSES.

A fee of three pounds ten shillings (£3 10s. 0d.) is hereby allowed to each attorney, for travelling expenses, between Montreal and Quebec, and from the other districts to each of the said places.—*Supplementary Rule, 20th September, 1866.*

**FEES ON PROCEEDINGS IN APPEAL,**  
**IN CASES INSTITUTED AFTER 25TH JANUARY, 1870.**

*Under Order in Council, promulgated 28th December, 1869.*

**IN APPEALS FROM SUPERIOR COURT.**

1. On every writ of appeal or writ of error,—	
clerk's fee .....	\$6 00
Ditto—court house tax .....	6 00
Ditto—crier's fee .....	3 00
<i>Total</i> .....	\$15 00
2. Copy of writ .....	0 50
3. On every alias writ of appeal or error.....	3 00
4. On every appearance filed by a respondent—	
clerk's fee.....	6 00
Ditto—crier's fee .....	3 00
<i>Total</i> .....	9 00
5. For entering and filing reasons of appeal or	
assignment of errors—clerk's fee.....	9 00
Ditto—court house tax.....	3 00
<i>Total</i> ...	12 00
6. For entering and filing answers to reasons of	
appeal or joinder in error—clerk's fee .....	0 50
Ditto—court house tax.....	2 00
<i>Total</i> .....	2 50
7. For entering and filing appellant's or respon-	
dent's case—clerk's fee.....	6 00
Ditto—court house tax .....	4 00
<i>Total</i> .....	10 00
8. For drawing and engrossing bail-bond... ..	3 00

**IN APPEALS FROM CIRCUIT COURT.**

9. On every appearance filed by an appellant.....	8 00
10. For entering and filing petition in appeal—	
clerk's fee. ....	1 00
Ditto—crier's fee .....	3 00
<i>Total</i> .....	4 00
11. On every appearance filed by a respondent—	
clerk's fee.....	4 00
Ditto—crier's fee.....	3 00
<i>Total</i> .....	7 00
12. For entering and filing appellant's or respon-	
dent's case.....	4 00
13. For drawing and engrossing bail-bond.....	2 00

## IN ALL APPEALS.

14. On every preliminary exception or demurrer.....	4 00
15. On every motion or petition for improbation ( <i>inscription en faux</i> ), disavowal or sequestration, and on every motion or petition for the recusation of judges, or for discontinuance of appeal or any desistment of appeal.....	6 00
16. On every motion for leave to appeal from an interlocutory judgment .....	\$ 4 00
17. On every motion or petition for the appointment of a judge <i>ad hoc</i> .....	3 00
18. On every petition to be appointed a bailiff of the court .....	4 00
19. On every motion or petition not specially mentioned above .....	2 00
20. On every rule in appeal .....	1 50
21. For each copy of every rule.....	0 50
22. For copy of judgment or order (rules excepted).....	1 00
23. For copies of all papers, per sheet of one hundred words .....	0 10
24. For every certificate of default and for certificate on copies of all papers.....	0 50
25. For authentication of documents and sealing the same .....	1 00
26. On every enquête or justification of security ordered by the court or a judge in chambers, per sheet of one hundred words .....	0 10
27. For every search of documents for a determined period .....	0 20
28. And if the search is for an undetermined period, for each year.....	0 20
29. On every writ of <i>certiorari</i> or <i>mandamus</i> , prohibition or writ of <i>habeas corpus</i> .....	4 00
30. And for each copy thereof.....	0 50
31. On taxation of bills of costs and certificate thereof...	1 00

## ON APPEALS TO HER MAJESTY.

32. For drawing and engrossing recognizance in appeal to the queen in council .....	4 00
33. For entering and taking the acknowledgment of it.....	1 00
34. On every transcript of record, and proceedings in appeals to the queen in council, whether made by the clerk or by the party appellant, per one hundred words.....	0 10
35. For collating the printing thereof, per one hundred words, an additional fee of.....	0 06
For every bail-bond on appeal to the queen in privy council, from judgments rendered in the court of queen's bench, duty under 12 Vic. c. 112, s. 5.....	24 00





TABLES  
OF THE  
STAMP DUTIES  
PAYABLE ON LAW PROCEEDINGS  
IN THE  
SUPERIOR COURT,  
PROVINCE OF QUEBEC.

NOTE.—To find out from the following tables the amount of stamps payable on any proceeding, add to the amount in the column of fees the amount in the column of taxes for the district.

The amounts in the first column of taxes are those payable in the districts of Montreal, Kamouraska, and Ottawa. Those in the second, in the district of Quebec. And those in the third, in the districts of Three Rivers, St. Francis, Gaspé, Terrebonne, Joliette, Richelieu, Saguenay, Chicoutimi, Rimouski, Montmagny, Beauce, Arthabaska, Bedford, St. Hyacinthe, Iberville, and Beauharnois.

No tax is payable on any alias or pluries writ of any kind or on any writ of attachment by garnishment after judgment in cases in which an execution has been previously issued.

TABLE shewing the amount of law stamps required under the stamp act, 27-28th Vic. ch. 5, and the order in council passed at Quebec on the 20th January, 1879, and published in the *Official Gazette*, on the 30th of the same month, in payment of fees and court house tax on the law proceedings hereinafter specified, had in the superior court, in the several districts of the province of Quebec:—

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.	Q.	T. R. St. F., G.
1. For every writ of summons, attachment, attachment for rent, revendication, <i>capias ad respondendum</i> , or any other writ,—	\$ c.	\$ c.	\$ c.	\$ c.
In actions above \$1000.....	1 80	3 00	2 00	1 00
In actions above \$400 but not above \$1000.....	1 50	2 00	1 50	0 80
In actions of \$400 or under.....	1 30	1 50	1 00	0 50
2. For every copy of writ.....	0 30			
3. On return of any writ or fying any intervention, petition in revocation of judgment, incidental demand or improbation,—				
In actions above \$1000 prothonotary \$5.00, crier 80c.	5 80			
In actions above \$400 but not above \$1000 prothonotary \$4.50, crier 80c.	5 30			
In actions of \$400 or under prothonotary \$4.00, crier 80c.	4 80			
4. On plea to any action, intervention, petition in revocation of judgment, incidental demand or improbation,—				
In actions above \$1000.....	6 00	2 00	1 50	0 80
In actions above \$400 but not above \$1000.....	6 00	1 50	1 00	0 50
In actions of \$400 or under.....	5 00	1 00	0 80	0 40
5. If defendants plead separately, each shall pay the same fee.				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.	Q.	T., B. St. F., G.
6. <i>Confession of judgment</i> : no fee shall be charged when confession is filed on return day or next following juridical day.	\$ c.	\$ c.	\$ c.	\$ c.
7. If confession is filed afterwards, there shall be paid on the inscription or motion for judgment the same fees as in contested or <i>ex parte</i> actions, as the case may be.				
8. On every <i>inscription</i> on merits, in any action, petition, intervention, petition in revocation of judgment, incidental demand, improbation or opposition, <i>contested</i> ,—				
In actions above \$1000.....	2 00	2 00	1 50	0 80
In actions above \$400 but not above \$1000.....	1 50	1 50	1 00	0 50
In actions of \$400 or under....	1 00	1 00	0 80	0 40
9. On every <i>inscription</i> on merits, in any action, intervention, petition in revocation of judgment, incidental demand, improbation or opposition, <i>not contested</i> ,—				
In actions above \$1000.....	2 00	1 50	1 00	0 50
In actions above \$400 but not above \$1000.....	1 50	1 00	0 80	0 40
In actions of \$400 or under....	1 00	0 80	0 50	0 30
10. On every original <i>subpoena</i> , not containing the names of more than four witnesses,—				
In actions above \$1000.....	0 20	0 40	.....	.....
In actions above \$400 but not above \$1000.....	0 20	0 30	.....	.....
In actions of \$400 or under....	0 20	0 20	.....	.....

TABLE shewing the amount of law stamps, &amp;c,—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.	Q.	T., R. St., F., G.
SUBPŒNAS.	\$ c.	\$ c.	\$ c.	\$ c.
11. For every official copy of sub- pœna .....	0 10	.....	.....	.....
12. On every <i>opposition</i> for pay- ment or claim whatever,—				
Above \$1000 .....	1 50	1 00	1 00	0 50
Above \$400 but not above \$1000 .....	1 00	0 60	0 60	0 30
Of \$400 or under.....	1 00	0 40	0 40	0 20
13. On every opposition or claim contested, the same fee as in actions for the same amount.				
14. On every opposition to annul, to withdraw, or to secure charges,—				
In actions above \$1000.....	1 50	2 00	1 00	0 50
In actions above \$400 but not above \$1000 .....	1 00	1 50	0 60	0 30
In actions of \$400 or under....	1 00	1 00	0 50	0 20
15 For entering up judgment maintaining or dismissing opposition, payable before fying inscription or motion to that effect.....	2 00	.....	.....	.....
16. If contested, the same fees as in actions for the same amount.				

The fees imposed by the present tariff upon proceedings in suits wherein the amount claimed exceeds four hundred dollars (\$400), but does not exceed one thousand dollars (\$1000), shall likewise be payable on similar proceedings in real or mixed actions, and in actions wherein the amount claimed is not specified, except hypothecary

TABLE shewing the amount of law stamps, &amp;c.—(Continued)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.	Q.	T., B. St., F., G.
	\$ c.	\$ c.	\$ c.	\$ c.
actions and actions for seigniorial dues, which shall be classified according to the amount claimed, and the fees charged upon the proceedings in these latter actions shall be the same as those which are payable on similar proceedings in actions of the class to which they belong.				
IN EACH CASE.				
17. On every <i>certificate of default</i> or no plea, or of any other proceeding in any suit or action .....	0 30	.....	.....	.....
18. On every <i>exception to the form</i> , declinatory or dilatory exception, or other preliminary plea,—				
In actions above \$1000 .....	2 40	2 00	1 50	0 80
In actions above \$400 but not above \$1000 .....	2 40	1 50	1 00	0 50
In actions of \$400 or under .....	2 40	1 00	0 80	0 40
19. For taking down in writing answers to interrogatories or articulated facts. ....	1 00	.....	.....	.....
20. On articulation of facts. ....	0 50	.....	.....	.....
21. On answers to articulation of facts .....	0 50	.....	.....	.....
22. On every <i>deposition</i> in <i>ex parte</i> or default cases .....	0 50	.....	.....	.....
23. For every deposition in suits or actions contested, <i>ten cents</i> per hundred words, and if the evidence is taken by a				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.,	Q.	T. R., St. F., G.
IN EACH CASE.—(Continued.)	\$ c.	\$ c.	\$ c.	\$ c.
stenographer, <i>ten cents</i> additional for every hundred words.				
4. The fees on these depositions are payable on demand and as soon as they are taken, by the party examining the witness.				
5. On filing <i>exhibits</i> at enquête.....	0 30	.....	.....	.....
6. On adjourning enquête in writing .....	0 50	.....	.....	.....
7. On motion to amend writ.....	2 00	.....	.....	.....
8. On motion to call in absentees..	0 50	.....	.....	.....
9. On motion or petition not mentioned in this tariff, presented to the court or to a judge in chambers.....	1 00	.....	.....	.....
10. On answer or contestation to any petition or motion mentioned in the foregoing article.....	1 00	.....	.....	.....
11. On drawing up minutes of improbation .....	2 50	.....	.....	.....
12. On <i>retraxit</i> before inscription on merits,—				
In actions above \$1000.....	1 00	2 00	.....	.....
In actions above \$400 but not above \$1000.....	1 00	1 50	.....	.....
In actions of \$400 or under....	1 00	1 00	.....	.....
13. On every re-hearing on merits..	1 00	.....	.....	.....
14. On every continuance of suit by petition or otherwise.....	1 50	.....	.....	.....
15. On every rule, not exceeding two hundred words,—				
In actions above \$1000.....	0 30	0 30	.....	.....



TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

SUPERIOR COURT.		Amount of Fees and of Tax payable upon each Proceeding.			
NATURE OF PROCEEDINGS.	FEES.	Tax.			
		M. K., O.	Q.	T., R. St. F., G.	
IN EACH CASE.—(Continued.)	\$ c.	\$ c.	\$ c.	\$ c.	
In actions above \$400 but not above \$1000.....	0 30	0 20	.....	.....	
In actions of \$400 or under....	0 30	0 10	.....	.....	
36. On every copy of rule not exceeding two hundred words .....	0 30	.....	.....	.....	
37. And for every additional hundred words.....	0 10	.....	.....	.....	
38. For every copy of interlocutory or final judgment not exceeding two hundred words,—					
In actions above \$1000.....	0 50	0 60	0 60	0 30	
In actions above \$400 but not above \$1000 .....	0 50	0 40	0 40	0 20	
In actions of \$400 or under....	0 50	0 30	0 30	0 20	
39. And for every additional hundred words.....	0 10	.....	.....	.....	
40. For taxing bill of costs,—					
In actions above \$1000 .....	0 30	1 00	0 80	0 40	
In actions above \$400 but not above \$1000.....	0 30	0 60	0 50	0 30	
In actions of \$400 or under....	0 30	0 40	0 30	0 20	
41. For every writ of execution,—					
In actions above \$1000 .....	1 00	1 50	1 00	0 50	
In actions above \$400 but not above \$1000.....	1 00	1 00	0 80	.....	
In actions of \$400 or under....	1 00	0 80	0 40	.....	
42. For every writ of attachment after judgment,—					
In actions above \$1000.....	1 00	1 50	1 00	0 50	
In actions above \$400 but not above \$1000.....	1 00	1 00	0 80	0 40	
In actions of \$400 or under....	1 00	0 80	0 40	0 20	
43. On return of writ of attachment after judgment.....	1 00	.....	.....	.....	

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.	Q.	T., R., St. F., G.
IN EACH CASE.—(Continued.)	\$ c.	\$ c.	\$ c.	\$ c.
44. On every inscription or motion for judgment on any attachment after judgment in an original action, in the hands of third parties, if garnishee's declaration is not contested...	2 50	.....	.....	.....
45. If contested, the same fees as in actions or suits for the same amount.				
46. On declaration of garnishee declaring himself indebted...	0 50	.....	.....	.....
47. On motion to homologate report of surveyor or experts, payable before it is received or granted .....	2 00	.....	.....	.....
48. On every <i>jurat</i> of experts, received before judge or prothonotary .....	0 30	.....	.....	.....
49. On every motion or inscription to homologate report of practitioner or auditor.....	2 50	.....	.....	.....
50. On every commission for the examination of witnesses.....	1 00	.....	.....	.....
51. On the execution of commission for the examination of witnesses from another court.....	1 00	.....	.....	.....
52. On filing and returning commission for the examination of witnesses.....	1 00	.....	.....	.....
53. For preparing jury list, including panel .....	2 00	.....	.....	.....
54. For every <i>venire facias</i> , including attendance at jury trial.	4 00	.....	.....	.....
55. On examination of each witness in writing, when such examination is ordered by the presiding judge .....	0 50	.....	.....	.....

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.  NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M., K., O.	Q.	T., R., St. F., G.
ing copy of advice of family council and of homologation.	\$ c. 20	\$ c.	\$ c.	\$ c.
78. For every act of advice of a family council respecting the election of a curator to a substitution or a vacant succession, held by the judge, clerk, a sub-delegate, or notary, including examination of papers, and copy of such advice .....	3 00	.....	.....	.....
79. For every act of advice of a family council, held either before the judge, the clerk, a sub-delegate, or notary, for the purpose of authorizing a tutor or curator to perform a special act, including examination of papers and copy of such advice .....	3 00	.....	.....	.....
80. For every authorization upon advice of family council, held before the judge, clerk, a sub-delegate or notary, to sell immovables belonging to minors, to absentees or to vacant succession, &c., or to sell bank stock, railway stock, &c., (copy of advice of family council included :) When the value of such immovable, bank stock, &c., does not exceed \$500, according to value established by arbitrators .....	2 00	.....	.....	.....
When it exceeds \$500, but does not exceed \$1000 .....	3 00	.....	.....	.....
When it exceeds \$1000, but				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M., K., O.	Q.	T., R., St., F., G.
NATURE OF PROCEEDINGS.				
	\$ c.	\$ c.	\$ c.	\$ c.
does not exceed \$2000.....	4 00	.....	.....	.....
When it exceeds \$2000.....	5 00	.....	.....	.....
81. And for examining the papers upon such authorization.....	1 00	.....	.....	.....
82. For every advice of family council, (including copy and examination of papers) for division of immovable or upon tutorship <i>ad hoc</i> held before the judge, clerk, a sub-delegate, or notary .....	3 00	.....	.....	.....
83. On every petition of a tutor in country parts for leave to sell minors' property, for drawing up order and homologation, with copy.....	1 50	.....	.....	.....
84. Upon every contestation of petition, either for tutorship or curatorship &c.....	6 00	.....	.....	.....
85. For every deposition of witness on advice of family council, tutorship or curatorship .....	0 50	.....	.....	.....
86. For emancipation of a minor upon advice of family council before the judge, clerk, a sub-delegate, or notary, including copy.....	2 00	.....	.....	.....
87. For closing an inventory.....	1 00	.....	.....	.....
88. For entering any renunciation, gift or other document, for every hundred words .....	0 10	.....	.....	.....
89. For every ministerial act outside of the office (not including travelling expenses), for each vacation .....	1 50	.....	.....	.....
90. For affixing and removal of seals, &c., for each vacation.	1 50	.....	.....	.....

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M., K., O.	Q.	T., R., St., F., G.
IN EACH CASE.—(Continued.)	\$ c.	\$ c.	\$ c.	\$ c.
56. On all proceedings upon a writ of error, writ of <i>scire facias</i> , <i>mandamus</i> , prohibition, or any prerogative writ, or any writ relating to corporate rights, if not settled before entry .....	4 00	.....	.....	.....
57. If contested, the same fees as in actions for the same amount.				
58. On every motion, with or without order, to obtain a prerogative writ, and all proceedings relating thereto..	2 00	.....	.....	.....
59. On all proceedings upon writ of <i>certiorari</i> , coercive imprisonment, or <i>Habeas Corpus</i> , if not settled before entry....	4 00	.....	.....	.....
60. On any motion, with or without order, for attachment, and proceedings thereupon.....	2 00	.....	.....	.....
61. For every recognizance, bail-bond, or security for costs....	1 00	.....	.....	.....
62. For every justification of solvency .....	0 50	.....	.....	.....
63. For every sworn bail-bond and copy .....	2 00	.....	.....	.....
64. For every copy of document not exceeding two hundred words (200) .....	0 40	.....	.....	.....
65. And for every additional hundred words (100).....	0 10	.....	.....	.....
66. Recording any document, per hundred words (100).....	0 10	.....	.....	.....
67. For every official certificate.....	0 30	.....	.....	.....

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.	Q.	T., R., St. F., G.
IN EACH CASE.—(Continued.)	\$ c.	\$ c.	\$ c.	\$ c.
68. For drawing up report of collocation or distribution.....	4 50			
69. On every opposition or claim collocated in any report of collocation or distribution or in any motion to distribute moneys .....	2 00	.....	.....	.....
70. On proceedings upon any report of collocation, not contested.	2 00	.....	.....	.....
71. On proceedings upon contestation of a report of collocation, or distribution, not withdrawn before inscription of contestation on <i>role de droit</i> .....	2 50	.....	.....	.....
72. Drawing up judgment of distribution .....	8 00	.....	.....	.....
73. On fying deed for ratification of title, including notices in both languages for publication in the <i>Official Gazette</i> ....	4 00	4 00	4 00	2 00
74. And for every copy of such notice, not exceeding two hundred (200) words.....	0 50	.....	.....	.....
75. And for every additional hundred (100) words.....	0 10	.....	.....	.....
76. On every opposition for a sum or value exceeding one thousand dollars (\$1000), to a judgment of ratification of title.....	3 00	2 00	2 00	1 00
77. On every opposition for a sum or value exceeding four hundred dollars (400), but not above one thousand dollars				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	TAX.		
		M. K., O.	Q.	T. R. S. F., G.
IN EACH CASE.—(Continued.)	\$ c.	\$ c.	\$ c.	\$ c.
(§1000), to a judgment of ratification of title.....	2 00	1 50	1 50	0 80
78. On every opposition for a sum or value of four hundred dollars (§400) or less, to a judgment of ratification of title .....	1 50	1 00	1 00	0 50
79. And if contested, the same fees as in suits or actions for the same amount.				
80. For every copy of judgment of ratification of title not exceeding eight hundred (800) words .....	1 00	1 00	1 00	0 50
81. And for every additional hundred (100) words.....	0 10			
82. On all proceedings in a suit in litation of an immovable property .....	9 40			
83. And on every additional immovable property .....	3 00			
84. For every record transmitted to the court of queen's bench (appeal side), except the transcription of the proceedings .....	4 50			
85. For bail-bond in appeal .....	1 00			
86. For justification of solvency....	0 50			
87. Transcribing proceedings, per hundred words .....	0 10			
88. On every suit evoked from the circuit court or commissioners court, payable before it is entered, or any proceedings taken .....	1 50			

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

SUPERIOR COURT.		Amount of Fees and of Tax payable upon each Proceeding.			
NATURE OF PROCEEDINGS.	FEES.	Tax.			
		M., K., O.	Q.	T., B., St. F., G.	
IN EACH CASE.—(Continued.)	\$ c.	\$ c.	\$ c.	\$ c.	
89. And on contesting the evocation, verbally or in writing.	1 50	.....	.....	.....	
90. On every motion with or without order, for re-sale upon the false bidder, and all proceedings relating thereto .....	2 00	.....	.....	.....	
91. On every motion with or without an order, on behalf of a purchaser for leave to retain in his hands the purchase price or a portion thereof, and on all proceedings thereupon .....	2 00	.....	.....	.....	
92. For drawing up judicial surrender .....	1 00	.....	.....	.....	
93. On the appointment of a curator to the surrender .....	2 00	.....	.....	.....	
94. For search amongst records, for more than one year .....	0 20	.....	.....	.....	
95. And for every general search...	0 50	.....	.....	.....	
96. On the probate of a will, not including fees on the depositions of witnesses.....	4 00	.....	.....	.....	
97. For registering a will, per hundred words.....	0 10	.....	.....	.....	
98. For each deposition of a witness taken on probate of a will .....	0 50	.....	.....	.....	
99. On petition to deposit copy of a will executed in any of the British Possessions, or in a foreign country, for drawing up order .....	1 00	.....	.....	.....	
100. For recording such copy.....	4 00	.....	.....	.....	



TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	TAX.		
		M. K., O.	Q.	T. R. St. F., G.
IN EACH CASE.—(Continued.)	\$ c.	\$ c.	\$ c.	\$ c.
101. For the certificate of the deposit of such copy.....	0 50	.....	.....	.....
102. For every copy of such copy, forty cents for the first two hundred words, and ten cents for every subsequent hundred words.				
103. For examining every candidate to be appointed bailiff, including notice and certificate .....	4 00	.....	.....	.....
104. For the commission of any bailiff .....	2 00	.....	.....	.....
105. For percentage on all moneys deposited in court, for four hundred dollars (\$400), or under, <i>one per cent.</i> , and for sums exceeding four hundred dollars (\$400), so deposited, <i>one half per cent.</i>				
106. For every act of advice of family council, including the order to call meeting and a copy of the act.....	1 50	.....	.....	.....
107. For homologation of advice of family council, held in country parts, by a subdelegation or a notary, (examination of papers), respecting appointment of a Tutor or Curator to absentees, including copy of advice of family council and of homologation .....	1 20	.....	.....	.....
108. For every act of advice of a family council respecting the election of a curator to a				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M., K., O.	Q.	T., B., St. F., G.
IN EACH CASE.—(Continued.)	\$ c.	\$ c.	\$ c.	\$ c.
substitution or a vacant succession, held by the judge, prothonotary, a sub-delegate, or notary, including examination of papers and copy of such advice.....	3 00	.....	.....	.....
109. For every act of advice of a family council, held either before the judge, prothonotary, a sub-delegate, or notary, for the purpose of authorizing a tutor or curator to perform a special act, including examination of papers and copy of such advice .....	3 00	.....	.....	.....
110. For every authorization upon advice of family council, held before the judge, prothonotary, a sub-delegate, or notary, to sell immovables belonging to minors, to absentees or to a vacant succession, &c., or to sell bank stock, railway stock, &c., (copy of advice of family council included): when the value of such immovable, bank stock, &c., does not exceed \$500 according to value established by arbitrators.....	2 00	.....	.....	.....
When it exceeds \$500, but does not exceed \$1000.....	3 00	.....	.....	.....
When it exceeds \$1000, but				

TABLE shewing the amount of law stamps, &amp;c.—(Continued)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.,	Q.	T., R., St. F., G.
	\$ c.	\$ c.	\$ c.	\$ c.
does not exceed \$2000.....	4 00			
When it exceeds \$2000.....	5 00			
111. And for examining the papers upon such authorization.....	1 00			
112. For every advice of family council, (including copy and examination of papers) for division of immovable or upon tutorship <i>ad hoc</i> , held before the judge, prothonotary, a sub-delegate, or notary .....	3 00			
113. On every petition of a tutor in country parts for leave to sell minors' property, for drawing up order and homologation, with copy .....	1 50			
114. Upon every contestation of petition, either for tutorship or curatorship, &c.....	6 00			
115. For every deposition of witness on advice of family council, tutorship or curatorship .....	0 50			
116. For every authorization by the judge or prothonotary to a woman whose husband is absent, to do some special act, including copy .....	2 00			
117. For every order to oblige a notary to give copy of a deed, including copy of the petition and order.....	2 00			
118. For emancipation of a minor upon advice of family council before the judge, prothonotary, a sub-delegate, or				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	FEES.	Amount of Fees and of Tax payable upon each Proceeding.			
		Tax.			
		M. K., O.	Q.	T., R., St.F., G.	
	\$ c.	\$ c.	\$ c.	\$ c.	
notary, including copy .....	2 00	.....	.....	.....	
119. For affixing and removal of seals, &c., for each vacation..	1 50	.....	.....	.....	
120. For every ministerial act outside of the office (not including travelling expenses), for each vacation .....	1 50	.....	.....	.....	
121. For closing an inventory .....	1 00	.....	.....	.....	
122. For entering renunciation, gift or other document, for each hundred words .....	0 10	.....	.....	.....	
123. On letters of benefit of inventory, security and copy of letters .....	2 50	.....	.....	.....	
124. For proceedings upon compulsory interdiction, either before the judge, prothonotary, a sub-delegate, or notary, including copy of judgment of interdiction but not depositions .....	3 00	.....	.....	.....	
125. For proceedings upon removal of compulsory interdiction, including copy of judgment.	2 00	.....	.....	.....	
126. For every deposition of a witness on interdiction .....	0 50	.....	.....	.....	
127. For proceedings upon voluntary interdiction, including copy of judgment. ....	2 00	.....	.....	.....	
128. For proceedings upon removal of voluntary interdiction, including copy of judgment.	1 50	.....	.....	.....	
129. For every extract of civil status .....	0 40	.....	.....	.....	
130. To authenticate a register of civil status .....	1 00	.....	.....	.....	
131. For every search respecting civil status, or any other					

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.	Q.	T. R. St. F. & G.
search in the department of tutorships, probate of wills, &c., for one year .....	\$ c. 0 20	\$ c	\$ c.	\$ c.
132. For every additional year.....	0 10			
133. For affixing the seal of the court to a document .....	0 10			
134. For deposit of each insurance company's charter .....	4 00			
135. For entering such deposit in register.....	1 00			
136. For certificate of such deposit.	0 50			
137. Upon every petition to disinter a corpse, including order and copy .....	2 50			
138. For numbering the leaves of any register, not exceeding four hundred pages.....	2 00			
139. To verify said registry, including certificate .....	2 00			
140. For every search among the minutes of a notary, for one year .....	0 20			
141. For every additional year.....	0 10			
IN CASES INSCRIBED FOR REVIEW.				
142. On receipt of record sent from districts other than those of Quebec and Montreal respectively .....	1 00			
143. On every review in suits coming from another district, payable on the entry of the review.....	3 00			
144. On every inscription in review.	3 00			
145. On respondent's appearance...	3 00			
146. On every re-hearing.....	1 00			
147. On every petition or motion made sitting the court.....	1 00			

T A B L E S  
OF THE  
S T A M P D U T I E S  
PAYABLE ON LAW PROCEEDINGS  
IN THE  
C I R C U I T C O U R T,  
PROVINCE OF QUEBEC.

NOTE.—To find out from the following tables the amount of stamps payable on any proceeding, add to the amount in the column of fees the amount in the column of taxes for the district.

The amounts in the first column of taxes are those payable in the districts of Montreal, Kamouraska, and Ottawa. Those in the second, in the district of Quebec. And those in the third, in the districts of Three Rivers, St. Francis, Gaspé, Terrebonne, Joliette, Richelieu, Saguenay, Chicoutimi, Rimouski, Montmagny, Beauce, Arthabaska, Bedford, St. Hyacinthe, Iberville, and Beauharnois.

No tax is payable on any alias or pluries writ of any kind or on any writ of attachment by garnishment after judgment in cases in which an execution has been previously issued.

ABLE shewing the amount of law stamps required under the stamp act, 27-28th Vic., ch. 5, and the order in council passed at Quebec on the 20th January, 1879, and published in the *Official Gazette*, on the 30th of the same month, in payment of fees and court house tax on the law proceedings hereinafter specified, had in the circuit court, in the several districts of the province of Quebec :—

CIRCUIT COURT.  —  NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M., K., O.	Q.	T. R., St. F., G.
IN APPEALABLE CASES.	\$ c.	\$ c.	\$ c.	\$ c.
1. For every writ of summons, attachment, attachment for rent, or revendication,— In actions above \$120.....	1 00	1 00	0 60	0 30
In actions of \$100 but not above \$120 .....	1 00	0 80	0 40	0 20
2. For every copy of writ.....	0 10	.....	.....	.....
3. On return of any writ, or filing of any intervention, petition in revocation of judgment, incidental demand or improbation,—clerk \$3.00 crier 30c.....	3 30	.....	.....	.....
4. On every confession of judgment,— In actions above \$120 .....	0 50	0 80	0 80	.....
In actions of \$100 but not above \$120.....	0 50	0 60	60	.....
5. On plea to any action, intervention, petition in revocation of judgment, incidental demand or improbation.....	2 50	.....	.....	.....
6. If defendants plead separately, each shall pay the same fee.	.....	.....	.....	.....
7. On every amendment to a declaration, plea or writ .....	0 50	.....	.....	.....
8. On every certificate of no plea, or any other default, or any	.....	.....	.....	.....



# STAMP DUTIES, C. C.

shewing the amount of law stamps, &c.—(Continued.)

CIRCUIT COURT.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	TAX.		
		M. K., O.	Q.	T. R. St. F., G.
NATURE OF PROCEEDINGS.				
other certificate not mentioned in this tariff.....	\$ c. 0 20	\$ c.	\$ c.	\$ c.
9. On every exception to the form, declinatory or dilatory exception, or other preliminary plea,—				
In actions above \$120.....	1 40	0 80	0 50	0 30
In actions of \$100 but not above \$120.....	1 40	0 60	0 30	0 20
10. On any retraxit filed before inscription on merits,—				
In actions above \$120.....	0 50	0 80		
In actions of \$100 but not above \$120.....	0 50	0 60		
11. On the filing of articulation of facts.....	0 50			
12. On the filing of answers to articulation of facts.....	0 30			
13. For taking down in writing answers on <i>faits et articles</i> ...	0 30			
14. For every subpoena.....	0 30			
15. For every official copy of subpoena.....	0 10			
16. On every deposition in <i>ex parte</i> or default cases.....	0 50			
17. For every deposition in suits or actions contested, <i>ten cents</i> per hundred words, and if the evidence is taken by a stenographer, <i>ten cents additional</i> for every hundred words.				
18. The fees on these depositions are payable on demand and as soon as they are taken, by the party examining the witness.				
9. On the filing of exhibits and				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.  NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O	Q	T. R. St. F., G.
	\$ c.	\$ c.	\$ c.	\$ c.
other documents at enquête.	0 30	.....	.....	.....
10. On adjournment of enquête in writing .....	0 50	.....	.....	.....
11. For drawing up minutes on improbation.....	1 00	.....	.....	.....
12. On every motion to set aside any writ or proceeding whatsoever.....	0 50	.....	.....	.....
13. On every inscription on merits, in any action, petition, intervention, petition in revocation of judgment, incidental demand, improbation or opposition, contested,—				
In actions above \$120.....	1 00	0 80	0 50	0 30
In actions of \$100 but not above \$120.....	1 00	0 60	0 30	0 20
14. On every inscription on merits, on any action intervention, petition in revocation of judgment, incidental demand, improbation or opposition, not contested,—				
In actions above \$120.....	0 50	0 50	0 40	0 20
In actions of \$100 but not above \$120.....	0 50	0 40	0 20	0 10
15. On any rehearing on merits, in action contested .....	0 50	.....	.....	.....
16. On every rule.....	0 50	0 10	.....	.....
17. On every copy of rule not exceeding two hundred words..	0 20	.....	.....	.....
18. And for every additional hundred words.....	0 10	.....	.....	.....
19. On motion to homologate any report of surveyor or experts, or arbitration, payable before motion is made.....	0 50	.....	.....	.....

**STAMP DUTIES, C. C.**

**TABLE shewing the amount of law stamps, &c.—(Continued.)**

CIRCUIT COURT.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.	Q.	T., R. St. F., C.
NATURE OF PROCEEDINGS.				
30. On every <i>jurat</i> of experts, before judge or clerk.....	\$ c. 0 30	\$ c. ....	\$ c. ....	\$ c. ....
31. On every motion or inscription to homologate a report of practitioner or auditors.....	0 50	.....	.....	.....
32. On every commission for the examination of witnesses, or commission of like nature...	0 60	.....	.....	.....
33. On the execution of a commission for the examination of witnesses from another court.....	1 00	.....	.....	.....
34. On any order for the examination of witnesses before a commissioner or other delegate, outside of the court ...	0 60	.....	.....	.....
35. For every copy of judgment,—				
In actions above \$120 .....	0 50	0 30	0 20	0 10
In actions of \$100 but not above \$120.....	0 50	0 20	0 20	0 10
36. On every opposition <i>afin de conserver</i> , for payment, or other opposition or claim whatever.....				
Above \$120,—clerk \$1.00, crier 30c. ....	1 30	0 30	0 30	0 20
Of \$100, but not above \$120—clerk \$1.00, crier 30c.....	1 30	0 30	0 30	0 2
On each opposition to secure charges, to annul, or to withdraw,—				
In actions above \$120,—clerk \$1.00, crier 30c. ....	1 30	0 80	0 30	0
In actions of \$100, but not above \$120 — clerk \$1.00, crier 30c.....	1 30	0 60	0 30	
37. For entering up judgment				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.  NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.	Q.	T., R. St. F., G.
maintaining or dismissing opposition, payable before filing inscription or motion to that effect .....	\$ c. 0 50	\$ c. ....	\$ c. ....	\$ c. ....
8. If contested, the same fees as in actions or suits for the same amount.				
9. For every writ of execution,— In actions above \$120.....	0 50	0 70	0 30	0 20
In actions of \$100 but not above \$120.....	0 50	0 50	0 30	0 20
10. For every writ of <i>Venditioni Exponas</i> .....	0 70	.....	.....	.....
11. For every writ of attachment after judgment,— In actions above \$120 .....	1 00	0 70	0 30	0 20
In actions of \$100 but not above \$120.....	1 00	0 50	0 30	0 20
12. On return of writ of attachment after judgment.....	1 00	.....	.....	.....
13. On declaration of garnishee declaring himself indebted..	0 20	.....	.....	.....
14. On every inscription or motion for judgment on any attachment after judgment in an original action, in the hands of third parties, if garnishee's declaration is not contested.....	0 50	.....	.....	.....
15. If contested, the same fees as in actions or suits for the same amount.				
16. On every motion or petition presented to the court or to a judge in chambers.....	0 50	.....	.....	.....
17. On any order in writing upon petition or otherwise, made in chambers.....	0 50	.....	.....	.....

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.	Amount of Fees and of Tax payable upon each Proceeding			
	FEES.	Tax.		
		M. K., O.	Q.	T. St. F.
NATURE OF PROCEEDINGS.	\$ c.	\$ c.	\$ c.	\$ c.
48. On answer or contestation to any petition or motion not mentioned in the present tariff .....	0 50			
49. For every recognizance, bail-bond, or security for costs....	0 40			
50. For every justification of solvency .....	0 20			
51. For every copy of document not exceeding two hundred words.....	0 30			
52. And for every additional hundred words.....	0 10			
53. For recording any document, per hundred words.....	0 10			
54. For every official certificate ...	0 20			
55. For taxing any bill of costs,— In actions above \$120.....	0 20	0 40	0 20	0 10
In actions of \$100 but not above \$120.....	0 20	0 30	0 20	0 10
56. For every record transmitted to the court of queen's bench (appeal side), except the transcription of the proceedings.....	2 00			
57. For transcribing proceedings, per hundred words. ....	0 10			
58. For every bail-bond in appeal.	0 70			
59. For every copy of bail-bond in appeal ...	0 50			
60. For justification of solvency...	0 20			
61. For security for costs.....	0 70			
62. For every writ of appeal.....	2 00			
63. For every copy of writ of appeal.....	0 50			
64. For preparing and transmitting record to court of review	2 00			

ABLE shewing the amount of law stamps, &c.—(Continued.)

CIRCUIT COURT.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.	Q.	T., R., St. F., G.
NATURE OF PROCEEDINGS.	\$ c.	\$ c.	\$ c.	\$ c.
For draft of report of distribution or collocation wherein the creditors collocated do not exceed four.....	2 00	.....	.....	.....
And when the creditors collocated exceed four.....	4 00	.....	.....	.....
On proceedings upon contestation of a report of collocation or distribution .....	1 00	.....	.....	.....
For drawing up judicial surrender .....	1 00	.....	.....	.....
On appointment of a curator to surrender.....	1 00	.....	.....	.....
For search amongst records, for more than one year.....	0 20	.....	.....	.....
For every general search.....	0 50	.....	.....	.....
For commission on any deposit of money, <i>one</i> per cent.				
On the probate of a will, not including fees on the depositions of witnesses.....	1 50	.....	.....	.....
For registering a will, per hundred words .....	0 50	.....	.....	.....
For each deposition of a witness taken on probate of a will.....	0 10	.....	.....	.....
For every act of advice of family council, including the order to call meeting and copy of the act.....	4 00	.....	.....	.....
For homologation of advice of family council, held in country parts, by a sub-delegate or a notary, (examination of papers), respecting appointment of tutor or curator to absentees, includ-				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M. K., O.	Q.	T. R. St. F.
NATURE OF PROCEEDINGS.				
ing copy of advice of family council and of homologation.	\$ c. 20	\$ c.	\$ c.	\$ c.
78. For every act of advice of a family council respecting the election of a curator to a substitution or a vacant succession, held by the judge, clerk, a sub-delegate, or notary, including examination of papers, and copy of such advice .....	3 00			
79. For every act of advice of a family council, held either before the judge, the clerk, a sub-delegate, or notary, for the purpose of authorizing a tutor or curator to perform a special act, including examination of papers and copy of such advice .....	3 00			
80. For every authorization upon advice of family council, held before the judge, clerk, a sub-delegate or notary, to sell immovables belonging to minors, to absentees or to vacant succession, &c., or to sell bank stock, railway stock, &c., (copy of advice of family council included :) When the value of such immovable, bank stock, &c., does not exceed \$500, according to value established by arbitrators .....	2 00			
When it exceeds \$500, but does not exceed \$1000 .....	3 00			
When it exceeds \$1000, but				

## TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.  NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	TAX.		
		M., K., U.	Q.	T., R., St., F., G.
	\$ c.	\$ c.	\$ c.	\$ c.
does not exceed \$2000.....	4 00	.....	.....	.....
When it exceeds \$2000.....	5 00	.....	.....	.....
1. And for examining the papers upon such authorization.....	1 00	.....	.....	.....
2. For every advice of family council, (including copy and examination of papers) for division of immovable or upon tutorship <i>ad hoc</i> held before the judge, clerk, a sub-delegate, or notary .....	3 00	.....	.....	.....
3. On every petition of a tutor in country parts for leave to sell minors' property, for drawing up order and homologation, with copy.....	1 50	.....	.....	.....
4. Upon every contestation of petition, either for tutorship or curatorship &c.....	6 00	.....	.....	.....
5. For every deposition of witness on advice of family council, tutorship or curatorship .....	0 50	.....	.....	.....
6. For emancipation of a minor upon advice of family council before the judge, clerk, a sub-delegate, or notary, including copy .....	2 00	.....	.....	.....
7. For closing an inventory.....	1 00	.....	.....	.....
8. For entering any renunciation, gift or other document, for every hundred words .....	0 10	.....	.....	.....
9. For every ministerial act outside of the office (not including travelling expenses), for each vacation .....	1 50	.....	.....	.....
10. For affixing and removal of seals, &c., for each vacation.	1 50	.....	.....	.....



TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.  NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	TAX.		
		M. K., O.	Q.	T., R. St., F., G.
	\$ c.	\$ c.	\$ c.	\$ c.
91. On letters of benefit of inventory, bail-bond and copy of letters .....	2 50	.....	.....	.....
92. For every sworn bail-bond and copy .....	2 00	.....	.....	.....
93. For proceedings upon compulsory interdiction, either before the judge, the clerk, a sub-delegate, or notary, including copy of judgment of interdiction, but not depositions.....	3 00	.....	.....	.....
94. For proceedings upon removal of compulsory interdiction as above stated, including copy of judgment.....	2 00	.....	.....	.....
95. For every deposition of a witness on interdiction.....	0 50	.....	.....	.....
96. For proceedings upon voluntary interdiction, including copy of judgment.....	2 00	.....	.....	.....
97. For proceedings upon removal of voluntary interdiction, including copy of judgment...	1 50	.....	.....	.....
98. To authenticate a register of civil status.....	1 00	.....	.....	.....
99. For every search respecting civil status, or any other search in the department of tutorships, probate of wills, &c., for one year .....	0 20	.....	.....	.....
100. For every additional year....	0 10	.....	.....	.....
101. For affixing seal of the court to a document.....	1 00	.....	.....	.....
102. For every authorization by the judge or prothonotary to a woman whose husband is				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M., K.,	Q.	T., R., St., F., G.
NATURE OF PROCEEDINGS.	\$ c.	\$ c.	\$ c.	\$ c.
absent, to do some special act, including copy.....	2 00	.....	.....	.....
13. For every order to oblige a notary to give copy of a deed, including copy of the petition and order .....	2 00	.....	.....	.....
14. Upon every petition to disinter a corpse, including order and copy .....	2 50	.....	.....	.....
IN NON-APPEALABLE CASES.				
15. For every writ of summons, attachment, attachment for rent, or revendication,—				
Above \$60.....	0 90	0 80	0 40	0 20
Above \$40 but not above \$60..	0 70	0 60	0 30	0 20
Above \$25 but not above \$40..	0 50	0 60	0 30	0 20
\$25 or under.....	0 30	0 20	0 20	0 10
16. For every copy of writ.....	0 10	.....	.....	.....
17. On return of any writ, or filing any petition in revocation of judgment,—				
Above \$60—clerk \$2.50, crier 30c.....	2 80	.....	.....	.....
Above \$40 but not above \$60—clerk \$1.50, crier 30c.....	1 80	.....	.....	.....
Above \$25 but not above \$40—clerk 80c., crier 30c.....	1 10	.....	.....	.....
\$25 or under—clerk 50c., crier 30c.....	0 50	.....	.....	.....
18. On plea thereto,—				
Above \$60.....	1 50	0 60	0 30	0 20
Above \$40 but not above \$60..	1 00	.....	.....	.....
Above \$25 but not above \$40..	0 50	.....	.....	.....
\$25 or under.....	0 30	.....	.....	.....
19. On filing any intervention or incidental demand,—				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M., K., O.	Q.	T., R., S.L.F.G.
	\$ c.	\$ c.	\$ c.	\$ c.
Above \$60—clerk \$1.00, crier 30c.....	1 30	0 60	0 30	0 20
Above \$40 but not above \$60—clerk \$1.00, crier 30c.....	1 30	0 40	0 30	0 20
Above \$25 but not above \$40—clerk 50c. crier 30c.....	0 80	0 40	0 10	0 10
\$25 or under—clerk 30c. crier 30c.....	0 60	0 10		
110. On every amendment,—				
Above \$60.....	0 50			
Above \$40 but not above \$60..	0 40			
Above \$25 but not above \$40..	0 30			
\$25 or under.....	0 20			
111. On every confession of judgment,—				
Above \$60.....	0 50	0 60		
Above \$40 but not above \$60..	0 40	0 40		
Above \$25 but not above \$40..	0 30	0 40		
\$25 or under..	0 20			
112. Taking down in writing answers on <i>faits et articles</i> ,—				
Above \$60.....	0 40			
Above \$40 but not above \$60..	0 30			
Above \$25 but not above \$40..	0 20			
\$25 or under.....	0 20			
113. On every imprecation —				
Above \$60.....	0 50			
Above \$40 but not above \$60..	0 50			
Above \$25 but not above \$40..	0 40			
\$25 or under.....	0 20			
114. Drawing up <i>procès verbal</i> .....	1 00			
115. On the presenting of any petition or motion,—				
Above \$60.....	0 50			
Above \$40 but not above \$60..	0 40			
Above \$25 but not above \$40..	0 30			
\$25 or under.....	0 20			

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M., K., O.	Q.	T., B. St. F., G.
NATURE OF PROCEEDINGS.				
16. On every original subpoena, not containing the names of more than four witnesses,—	\$ c.	\$ c.	\$ c.	\$ c.
Above \$60.....	0 20	0 10	.....	.....
Above \$40 but not above \$60..	0 20	0 10	.....	.....
Above \$25 but not above \$40..	0 20	0 10	.....	.....
\$25 or under.....	0 10	.....	.....	.....
17. For every copy of subpoena ...	0 10	.....	.....	.....
18. For every deposition in writing,—				
Above \$60.....	0 50	.....	.....	.....
Above \$40 but not above \$60..	0 40	.....	.....	.....
Above \$25 but not above \$40..	0 30	.....	.....	.....
\$25 or under.....	0 20	.....	.....	.....
19. For every affidavit in writing to obtain judgment,—				
Above \$60.....	0 40	.....	.....	.....
Above \$40 but not above \$60..	0 30	.....	.....	.....
Above \$25 but not above \$40..	0 20	.....	.....	.....
\$25 or under.....	0 10	.....	.....	.....
20. For every copy of judgment,—				
Above \$60.....	0 50	0 10	0 20	0 10
Above \$40 but not above \$60..	0 40	0 10	0 10	0 10
Above \$25 but not above \$40..	0 30	0 10	0 10	0 10
\$25 or under.....	0 20	.....	.....	.....
21. For taxing any bill of costs—				
Above \$60.....	0 20	0 30	0 20	0 10
Above \$25, but not above \$60..	0 20	0 20	0 10	0 10
\$25 or under.....	0 20	.....	.....	.....
22. For every writ of execution, or writ of attachment after judgment,—				
Above \$60.....	0 50	0 50	0 30	0 20
Above \$40 but not above \$60..	0 40	0 30	0 30	0 20
Above \$25 but not above \$40..	0 30	0 30	0 30	0 20
\$25 or under.....	0 20	0 20	0 20	0 10
23. On return of writ of attachment after judgment,—				

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.		Amount of Fees and of Tax payable upon each Proceeding.			
NATURE OF PROCEEDINGS.	FEES.	Tax.			
		M., R., O.	Q.	T., R., St. F., G.	
		\$ c.	\$ c.	\$ c.	
Above \$60 .....	1 00	.....	.....	.....	
Above \$40 but not above \$60..	1 00	.....	.....	.....	
Above \$25 but not above \$40..	0 50	.....	.....	.....	
\$25 or under.....	0 30	.....	.....	.....	
124. If contested, the same fees as in actions or suits for the same amount.....					
125. On declaration of garnishee declaring himself indebted,—					
Above \$60 .....	0 30	.....	.....	.....	
Above \$40 but not above \$60..	0 30	.....	.....	.....	
Above \$25 but not above \$40..	0 20	.....	.....	.....	
\$25 or under.....	0 10	.....	.....	.....	
126. For drawing up a report of distribution,—					
Above \$60 .....	2 00	.....	.....	.....	
Above \$40 but not above \$60..	2 00	.....	.....	.....	
Above \$25 but not above \$40..	1 50	.....	.....	.....	
\$25 or under .....	1 00	.....	.....	.....	
127. On every rule, not exceeding two hundred words,—					
Above \$60 .....	0 20	.....	.....	.....	
Above \$40 but not above \$60..	0 20	.....	.....	.....	
Above \$25 but not above \$40..	0 20	.....	.....	.....	
\$25 or under.....	0 10	.....	.....	.....	
128. On every copy of rule not exceeding two hundred words..	0 10	.....	.....	.....	
129. And for every additional hundred words.....	0 10	.....	.....	.....	
130. On every official copy of a document, not including certificate, per hundred words...	0 10	.....	.....	.....	
131. On every evocation, including attendance and transmission of record.....	2 00	.....	.....	.....	
132. On every commission for the examination of witnesses, and proceedings thereupon,—					

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

NATURE OF PROCEEDINGS.	Amount of Fees and of Tax payable upon each Proceeding.			
	FEES.	Tax.		
		M., K., O.	Q.	T., R., St. F., G.
	\$ c.	\$ c.	\$ c.	\$ c.
Above \$60.....	0 50	.....	.....	.....
Above \$40 but not above \$60..	0 50	.....	.....	.....
Above \$25 but not above \$40..	0 50	.....	.....	.....
\$25 or under.....	0 30	.....	.....	.....
133. On the execution of any commission for the examination of witnesses from another court.....	0 60	.....	.....	.....
134. On examination of any witness thereunder, including contradictory examination,—				
Above \$60 .....	0 50	.....	.....	.....
Above \$40 but not above \$60..	0 40	.....	.....	.....
Above \$25 but not above \$40..	0 40	.....	.....	.....
\$25 or under.....	0 40	.....	.....	.....
135. On every order to examine witnesses before a commissioner or delegate outside of court.....	0 40	.....	.....	.....
136. On every opposition for payment or claim whatever,—				
Above \$40 but not above \$100 clerk, \$1.00; crier, 30c.....	1 30	0 20	0 30	0 20
Above \$25 but not above \$40.. clerk, 50c.; crier, 30c. ....	0 80	0 20	0 30	0 20
\$25 or under: clerk, 30c.... crier, 20c.....	0 60	0 10	0 10	0 10
On each opposition to secure charges, to annul or to withdraw,—				
Above \$60, but under \$100.... clerk, \$1.00; crier, 30c.....	1 30	0 60	.....	.....
Above \$40, but not above \$60. clerk, \$1.00; crier, 30c.....	1 30	0 40	.....	.....
Above \$25, but not above \$40. clerk, 50c.; crier, 30c.....	0 80	0 10	.....	.....

TABLE shewing the amount of law stamps, &amp;c.—(Continued.)

CIRCUIT COURT.		Amount of Fees and of Tax payable upon each Proceeding.			
NATURE OF PROCEEDINGS.	FEES.	Tax.			
		M., K., O.,	Q.	T., R., St., F., G.	
137. If contested, on filing contestation of any opposition,—	\$ c.	\$ c.	\$ c.	\$ c.	
Above \$60 .....	1 50	.....	.....	.....	
Above \$40 but not above \$60..	1 00	.....	.....	.....	
Above \$25 but not above \$40..	0 50	.....	.....	.....	
\$25 or under .....	0 30	.....	.....	.....	
138. For every search amongst records, beyond two years ...	0 20	.....	.....	.....	
IN EVERY CASE.					
139. For commission on moneys deposited, <i>one per cent.</i>					
140. For any writ of <i>capias ad respondendum</i> , or attachment before judgment, including copy of writ .....	1 00	.....	.....	.....	
141. On every additional copy.....	0 10	.....	.....	.....	
142. On every appeal from circuit court, on entry of appeal ...	2 00	.....	.....	.....	
143. On the filing of appearance for respondent.....	1 50	.....	.....	.....	
144. For every security not mentioned in this tariff .....	0 40	.....	.....	.....	

# TABLE OF FEES

PAYABLE IN THE

COURT OF VICE-ADMIRALTY

QUEBEC.





TABLES  
OF THE  
STAMP DUTIES  
PAYABLE ON LAW PROCEEDINGS  
IN THE  
CIRCUIT COURT,  
PROVINCE OF QUEBEC.

Should the registrar be required to prepare any other document, instrument or matter whatsoever, not specified in this table, he will be entitled to the same charge as a proctor, viz.,—

For drawing, for every folio.....	£0	1	0
For fair copying or engrossing, for every folio..	0	0	6

2. *Fees on documents not prepared by the registrar, but by the proctor, solicitor or advocate in a cause.*

On a decree, pronouncing for the interest of a party proceeding <i>in pœnam</i> , being signed by the judge, including the drawing the act .....	0	6	0
On filing affidavit or protest of a master or mariners, without reference to the number of persons making the same.....	0	1	6
On filing libel, information, claim, proxy or similar document.....	0	2	3
On filing exhibit annexed thereto or to any affidavit..	0	0	6
On signing (or filing) personal answers of a party in a suit, including drawing the act .....	0	3	0

3. *Fees on taking the examination of witnesses.*

On the examination of every witness on an information, libel, interrogatories or plea (whether <i>viva voce</i> or otherwise), a fee of.....	0	4	6
For each folio to which the examination shall extend, if in English .....	0	1	0
If by interpretation (interpreter included).....	0	2	0

NOTE.—It should be understood that the registrar, or whoever acts as the examiner for him, should take depositions in chief of the witnesses, on the libel, information or plea itself, without written interrogatories, putting such relevant questions, *viva voce*, as may suggest themselves, and care should be taken not to lead the witness. The libel, information or plea should, therefore, always be drawn sufficiently precise and full to enable the examiner to take the examinations accordingly. The cross-examinations must, of course, be taken on written interrogatories.

4. *Fees on office copies of papers or proceedings.*

For office copy of sentence or interlocutory decree, certified under seal.....	£0	6	0
For office copy of any affidavit, examination, answers of a party, or other documents or proceedings in a cause, or extract therefrom, if under twelve folios.....	0	4	6

If exceeding twelve folios, for each folio beyond twelve.....	£0	0	6
Office copies of papers and proceedings to form a process, to be transmitted to the court of appeal, or for any other purpose, for each folio contained therein .....	0	0	6

5. *Fees on translation of papers.*

Where papers are translated, the registrar should charge the disbursement actually made to the translator, with an addition of one-fourth, to compensate himself for his trouble, advance, &c.

6. *Incidental fees in the progress of a cause.*

On subduction of an action.....	0	4	6
For entering every ordinary act of court not specified in this table.....	0	1	0
On every default pronounced against parties in contempt, in cases proceeding <i>in penam</i> .....	0	4	6
On every interlocutory decree, or sentence, including drawing the act to be paid by the party succeeding .....	0	9	0
For every attendance before a judge or surrogate, at which any decree is made, other than an interlocutory or sentence, including the act, drawing the act .....	0	4	6
For a receipt for original documents delivered out of the registry.....	0	1	6
On a search or examination of the records, by any person not being a party in the cause in which the search is made.....	0	1	0

**NOTE.**—No fee to be charged to a party in the cause, or to any seaman applying for a search.

For advertising an intermediate or extra court day, in addition to the sum paid for advertisement.....	0	4	6
--	---	---	---

7. *On paying out money.*

For preparing receipt for money to be paid out of the registry .....	0	1	6
Poundage on money paid out of the registry, for every pound sterling.....	0	0	2

8. *Taxing Costs.*

For taxing a bill of costs, £ under six folios, from the party at whose instance the taxation takes place.	0	4	6
--	---	---	---

9. *References of accounts, &c., by the judge to the registrar and merchants,*

To the registrar.....	£2	2	0
To the assistant merchant.....	2	2	0
If two merchants, two guineas each.			

BY THE MARSHAL.

For arresting a vessel, goods or person.....	0	18	0
For keeping possession of a vessel and cargo, jointly, or either of them singly when the same are not under the responsible charge and custody of the officers of the customs, for each day in which they remain in the marshal's charge, exclusive of charges for keepers when necessary.....	0	3	0

NOTE.—*This fee not to be chargeable in cases where the goods have been put into store or warehouse.*

For inquiring into and certifying the sufficiency of persons proposed as sureties in any suit.....	0	2	3
For release of a vessel, goods, or person, from arrest.....	0	2	3
For executing any monition, or decree for answers of a party, or compulsory or other instrument not specified.....	0	4	6
For every default or decree pronounced for the interest of a party proceeding <i>in pænam</i> .....	0	3	0
For every attendance in court, when a sentence or interlocutory decree is pronounced.....	0	4	6
For executing any decree or commission of appraisement, exclusive of the appraiser's fees, but including the making of the inventory, if the value should not exceed £500 sterling.....	1	1	0
For the like duty, when the value exceeds £500 sterling.....	1	16	0
For executing every decree or commission of sale of ship or goods, by public auction, when the gross proceeds are under £200 sterling.....	1	1	0
And on every additional £100 sterling.....	0	10	6
On attending the execution of a decree or commission of unlivery of cargo, (when not done for the purpose of sale,) per day.....	0	16	0
For taking a person in execution, after sentence, if the sum due from such person does not exceed £20 sterling.....	0	18	0
For the like duty, when the sum is above £20, and under £50 sterling.....	1	16	0

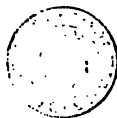
For the like duty, when the sum is above £50, and under £100 sterling, for every pound sterling due.....	£0	1	0
and on every additional pound sterling, after the first £100. ....	0	0	6

[NOTE.—Should it be necessary for the marshal to go any distance, to execute any of the above duties, there should be paid to him, for loss of time and travelling expenses, in addition to the preceding fees, the following :

If the distance exceeds four and be under six miles.....	1	1	0
If the distance be still greater, the allowance to be increased by an addition of 2s. 3d. for each additional league, and his reasonable disbursements.			

#### BY THE ADVOCATES.

As the profession of advocate and proctor are not as yet separated in Lower Canada, the fees of both are inserted under the following head :



#### BY THE ADVOCATES AND PROCTORS.

Retaining fee, instructions to prosecute or defend.....	0	10	6
For attending before the judge, or judge surrogate, either in court or chambers ....	0	6	0
On extracting any warrant, monition, commission, writ, or other instrument.....	0	6	0
Drawing libel, information, claim, and affidavit, act on petition, responsive plea (or replication) to libel or information, or act on petition .....	0	18	0
Engrossing copies, each. ....	0	9	0
Drawing interrogatories, answers, affidavits, or any other proceeding whatever, not herein specified, for each folio.....	0	1	0
Fair copying or engrossing, for every folio.....	0	0	6

[NOTE.—It should be understood that in preparing interrogatories for the cross-examination of witnesses, they are not to be drawn separately for each witness to whom the same are to be administered, but that when practicable, as in most instances will be the case, one set of interrogatories should be prepared, generally applicable to all the witnesses.

For consultation with party, for the purpose of taking instructions for the libel, information, plea, act on petition, or for any other important purpose, during the dependence of a suit.....	£0	6	0		
The fee for the final hearing must depend upon the length of the evidence, and the importance and difficulties of the cause; but in cases of no great intricacy, the fee should be from two to three guineas, and not to exceed the latter sum, unless where the proceedings are voluminous, or unusually important or difficult, and in this last case not to exceed five guineas.....	}	2	2	0	
		3	3	0	
		or			
		5	5	0	
For any necessary attendance on the registrar, or on the adverse proctor, during the progress of a cause, to adjust any incidental point in the suit, or on the marshal, to instruct him as to the service of any instrument, reporting bail, &c.....		0	4	6	
On all office copies of depositions, &c., obtained from the registrar, one-third of the actual sum paid at the registry is to be added for the trouble of collating and extracting the same.					
For perusing and considering any papers, exhibits or documents, furnished or introduced into a cause by the adverse party, or furnished by a party to his own proctor, for the purpose of being brought forward as evidence in the suit, if not exceeding twelve folios.....		0	3	0	
For every additional twelve folios.....		0	1	6	
For attending informations on the final hearing of a cause, when it occupies only a short time, 10s.; if a few hours, 16s. 8d.; if whole day, £1. 6s. 8d.....	}	0	10	0	
		0	16	8	
		or			
		1	6	8	

NOTE.—In some of the vice-admiralty courts proceedings for the forfeiture of ships or goods, and for the recovery of penalties consequent thereon, have, in some instances, been carried on by two separate suits—one for the condemnation of the property, and the other for the penalties. This mode of proceeding should be discontinued, one suit only being necessary to accomplish both objects.

In all cases under £20 sterling, wherein the judge shall see fit to order that the proceedings be summary and the evidence taken viva voce, the fees to be taken by the several officers of the court shall become half of the foregoing fees, and no more,

*save and except as to the fee for the warrant of arrest, arrest and bail bond, which shall remain as above.*

*So also as to cases under £20 sterling settled before the return of the warrant.*

---

AT THE COURT AT BUCKINGHAM PALACE,  
*The 2nd day of March, 1848.*

P R E S E N T :

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

Whereas, there was this day read at the Board, a memorial of the right honourable the lords commissioners of the admiralty, dated the 16th February, 1848, in the words following viz. :

"Whereas, by his late majesty's order in council, of the 27th June, 1832, certain tables of fees were established for the several courts of vice-admiralty; and by a subsequent order in council of his late majesty, dated 20th November, 1835, so much of the preceding order in council as related to the establishment of a table of fees, to be taken by the several officers of the vice-admiralty court at Quebec, was revoked; and whereas, the lords commissioners of your majesty's treasury have represented to us that it would be desirable to establish a table of fees for the said vice-admiralty court at Quebec, we do, therefore, most humbly submit to your majesty, that your majesty will be most graciously pleased, by your order in council, to authorise us to carry into effect the proposal of the lords commissioners of your majesty's treasury, and that the table of fees hereunto annexed, which has been proposed by your majesty's advocate-general and other competent authorities of the high court of admiralty of England, may be established, by your majesty's order in council, as the only fees to be taken, or received, by the officers and practitioners of the vice-admiralty court at Quebec."

Her majesty having taken the said memorial into consideration, was pleased, by and with the advice of her privy council, to approve thereof, and of the table of fees accompanying the same (copy whereof is hereunto annexed), and the right honourable the lords commissioners of the admiralty are to give the necessary directions herein accordingly.

(Signed)

C. GREVILLE.

Entered and enrolled in the vice-admiralty court, at Quebec.  
the 27th day of June, 1848.

J. P. BRADLEY, Registrar.



[REDACTED]

**RULES AND ORDERS**  
**AND**  
**TARIFF OF FEES**  
**IN**  
**INSOLVENCY MATTERS**  
**PROVINCE OF QUEBEC.**

1

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3

# RULES AND ORDERS

IN

## INSOLVENCY MATTERS

*Made by the Judges of the Superior Court for Lower Canada  
under and by virtue of the Statutes 27 and 28 Vict., cap.*

*17, intituled: "An act respecting Insolvency,"  
and continued in force by the "Insol-  
vent Act of 1869." s. 138.*

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1. There shall be assigned in the court-house of each judicial district at which the sittings of the superior court are held, two rooms for matters in insolvency, one in which the sittings of the judge shall be held, and the other for the office of the clerk in insolvency.

2. All judicial proceedings in insolvency shall be had and conducted in the said court room alone, and not elsewhere; and the sittings of the judge shall commence at 11 A.M., or at such hour as the judges or judge in each district shall hereafter appoint, and shall continue till the business of the day shall be completed, or until the judge shall adjourn the same.

3. The clerk's office shall be kept open every juridical day, from 9 A.M. to 4 P.M., and shall be attended during that

time by a clerk appointed by the district prothonotary, and who shall be known as "The Clerk in Insolvency."

4. To ensure regularity of proceedings at the sittings of the judges, the business shall be conducted in the following order :

- I. Meeting of creditors ;
- II. Motions ;
- III. Rules nisi ;
- IV. Petitions, except as hereinafter mentioned ;
- V. Proceedings on applications for discharge of insolvents ;
- VI. Proceedings on applications for discharge of assignee ;
- VII. Appeals.

5. Proceedings before a judge or court may be conducted by the insolvent himself, or by any party having interest therein, or by their attorney *ad litem*, admitted to practice in Lower

Canada, and by no other person.

6. All motions, petitions and claims, and all papers in the nature of pleadings in insolvency shall be intituled: In Insolvency for the District of .....In the matter of..... Insolvent, and.....Claimant, Petitioner or Applicant, as the case may be, plainly written, without interlineations or abbreviations of words; and the subject or purpose thereof shall be plainly and concisely stated. They shall also be subscribed by the petitioner, applicant or claimant, or by his attorney *ad litem* for him; and they shall be subject to the ordinary rules of procedure of the superior court in respect of similar papers, as regards the names and designations of the parties, and the mode in which they shall be docketed and filed.

7. No paper of any description shall be received or filed in any case, unless the same shall be properly numbered and intituled in the case or proceeding to which it may refer or belong; and be also endorsed with the general description thereof, and with the name of the party or his attorney *ad litem* filing the same.

8. In all appealable matter in dispute, the pretensions of the parties shall be set forth in writing, in a clear, precise and intelligible manner, and the notes of the verbal evidence taken before the assignee shall be plainly written, shall be signed by the witness, if he can write and sign his name, and *shall be certified by the as-*

signee as having been sworn before him. And, in the event of an appeal, the assignee shall make and certify a transcript from his register, of the proceedings before him in the matter appealed from. And he shall also make and certify a list of the documents composing such proceedings and appertaining thereto, and shall annex such transcript and list to such documents with a strong paper or parchment cover, before producing the record before the judge, as required by the said act.

9. All proceedings before a judge or court shall be entered daily, in order of date, in a docket of proceedings, to be kept by the clerk for each case; and shall, from time to time, and until the close of the estate, be fairly transcribed in registers suitable therefor, which shall be kept and preserved by the prothonotary, in the same manner as the registers of proceedings of the superior court.

10. No demand, petition or application of which notice is required to be given, either by the provisions of the said act or by an order of the judge or court, shall be heard until after such notice shall have been given, and due return thereof made and filed in the case.

11. Except where otherwise limited and provided by the said act, and upon good cause shewn, the proceeding, after notice thereof has been given, may be enlarged by the judge or court whenever the rights of parties interested may seem to

require it for the purpose of justice.

12. Whenever a particular number of days is prescribed for the doing of an act in insolvency, the first and last days shall not be computed, nor any fractions of a day allowed; and when the last day shall fall upon a Sunday or holiday, the time shall be enlarged to the next juridical day.

13. All affidavits of indebtedness, made by a creditor, or by a clerk or agent of a creditor shall set forth the particulars and nature of the debt, with the same degree of certainty and precision as is required in the affidavits to hold to bail in civil process in the courts of Lower Canada.

14. All writs of attachment issued under the said Act, shall, as issued, be numbered and entered successively by the clerk in a book, to which there shall be an index, and to which access for examination or extract shall be had *gratis*, at all times during office hours.

15. Every such writ shall describe the parties thereto, in the same manner as they are described in the said affidavits of debts; and the declaration accompanying the said writ, shall be similar in its form to the declarations required to be filed in ordinary suits in the superior court.

16. No such writ shall issue until after the affidavit of debt upon which the writ is founded, shall have been duly filed in the clerk's office.

17. All services of writs, rules, notices, warrants and

proceedings in Lower Canada, except otherwise specially prescribed by the said act, may be made by a bailiff of the superior or circuit court, whose certificates of service shall be in the form required for service of process in the said courts; or by any literate person, who shall certify his service by his affidavit; and in either case, the manner, place and time of such service shall be described in words, and also the distance from the place of service to the place of proceeding.

18. All services of writs, rules, notices, warrants or other proceedings, shall be made between the hours of 8 A. M. and 7 P.M., unless otherwise directed by the judge or court upon good cause shewn.

19. Writs of attachment need not be called in open court, but shall be returned on the return day into the clerk's office, and shall be there filed for proceedings thereon, as may be advised or directed.

20. Every day except Sundays and holidays, shall be a juridical day for the return of said writs, and for judicial and court proceedings.

21. The sheriff to whom the writ of attachment is addressed shall not be required to make any detailed inventory or *procès-verbal* of the effects or articles by him attached under such writ; but a full and complete inventory of the insolvent's estate, so attached by the sheriff, shall be made by the assignee or person who shall be placed in possession thereof as guardian under

such writ; by sorting and numbering the books of account, papers, documents and vouchers of the estate, and entering the same, with the other assets, and effects thereof, in detail, in a book for the same, which shall be called "The Inventory of the Estate of.....," and which shall be filed by the said assignee or person in possession, on the return day of the said writ, as required by the said act; and the said inventory shall be open for examination or extract at all times during office hours, *gratis*.

22. Immediately upon the execution of the voluntary deed or instrument of assignment to the assignee, he shall give notice thereof by advertisement in the form of D. of the said act (*vide The Insolvent Act of 1869, s. 2, and form A*), requiring, by such notice, all creditors of the insolvent to produce before him, within two months from the date thereof, their claims, specifying the security therefor, with the vouchers in support of such claims, as required by such notice.

23. The clerk shall prepare for the judge or court, a list of matters pending or ready and fixed for proceeding on each day, following therein the order of procedure prescribed by the 4th rule, which list shall be communicated to the judge on the previous day.

24. The record of proceedings in each case shall at all times during office hours, be accessible, at the clerk's office, to creditors and others in interest in such cases, for exam-

ination or extract therefrom, *gratis*. And in like manner the minutes of meetings of creditors, and the registers of proceedings, together with claims made and the documents in possession of the assignee, shall also be accessible to creditors and others in interest in the case, at convenient hours, daily, to be appointed by the said assignee.

25. The assignee shall, from time to time, under order of date, and within twenty four hours after the proceedings had before him, file in the said clerk's office, a clear copy under his signature as such assignee, of such proceedings, together with a copy of the several newspapers and Official Gazette, in which he shall have caused notices of such proceedings to be advertised, which said copy and newspapers shall form part of the record of the particular case.

26. The assignee shall, on the third juridical day of each month, after he shall have commenced to deposit estate moneys in a bank or bank agency, as required by the said act, file of record in the case an account of the estate, shewing the balance thereof in his hands, or under his control, made up to the last day of the preceding month. And no moneys so deposited, shall be withdrawn without a special order of the court, entered in the docket of proceedings in the case, or upon a dividend sheet prepared and notified, as required by the said act, or unless otherwise ordered by the

creditors, under the powers conferred upon them by the said act.

27. Every want of compliance with these rules in proceedings in insolvency shall be *à peine*

*de nullité*, and the proceeding in which the irregularity has occurred if objected to, on the ground of such want of compliance, shall be null and have no effect.

EDWD. BOWEN, Ch. Jus. S.C.

J. SMITH, J.S.C.

EDWD. SHORT, J.S.C.

W. BADGLEY, J.S.C.

J. MCCORD, J.S.C.

A. LAFONTAINE, J.S.C.

A. POLETTE, J.S.C.

J. A. BERTHELOT, J.S.C.

S. C. MONK, A.J.S.

J. J. TASCHEREAU, A.J.S.



## TARIFF OF FEES IN INSOLVENCY.

FEES PAYABLE TO THE PROTHONOTARY UNDER ORDER IN COUNCIL  
OF THE 20TH JANUARY, 1879.

On filing proceedings relating to the appointment of an interim assignee as assignee.....	\$ 2 50
When another person is appointed.....	3 00
On filing consent of creditors, or deed of composition and discharge.....	2 00
For every writ of attachment.....	2 00
For every concurrent writ, when required.....	2 00
For every copy of such writs.....	0 60
On the return of any writ of attachment.....	6 00
For the prothonotary's attendance at a meeting to appoint an assignee.....	2 00
For copy of judgment appointing assignee.....	1 00
On filing of petition to contest demand of compulsory liquidation.....	6 00
For every answer in writing to a contestation.....	1 00
On filing any contestation before assignee and submitted to the Court or a Judge for settlement.....	1 00
On filing a petition in appeal to a Judge.....	4 00
On returning record.....	1 00
For an order to serve for examining debtor or other parties touching the insolvent's estate and effects.....	0 50
On filing any petition, other than in appeal in contesting proceedings for compulsory liquidation.....	2 00
For copy of order.....	0 50
On filing contestation.....	2 00
On each deposition of a witness, per hundred words.....	0 10
On filing any petition or application for discharge.....	2 00
On every petition and application not raising a contestation, not mentioned above.....	1 00
For the order or copy.....	0 50
On every motion, rule, copy of rule, judgment, order, <i>commission rogatoire</i> , and other incidental proceeding, not specified above, the same fees as those charged by this tariff in first class actions.	
<i>To the criers (including the assistants and criers of the Court.)</i>	
On return of any writ of attachment under insolvent act.....	0 80

## FEES TO ATTORNEYS.

*On Proceedings for Compulsory Liquidation.*

For conducting proceedings to the appointment of official assignee,—

To plaintiff's attorney,—	
If not contested.....	30 00
If contested—additional fee .....	20 00
Counsel's fee at enquête,—additional.....	10 00
To defendant's attorney,—	
If not contested,—fee on appearance.....	10 00
If contested,—additional fee.....	20 00
Counsel's fee at enquête.....	10 00

*On preparing Claims.*

For every chirographary claim without security.....	1 00
“ “ “ “ with security.....	2 00
For every hypothecary claim, if not contested.....	5 00

*On every Contestation of Claim.*

Without enquête,—	
To claimant's attorney.....	\$10 00
To contestant's attorney.....	10 00
With enquête,—	
To claimant's attorney.....	25 00
To contestant's attorney.....	20 00

*On Contestations of Dividend Sheet.*

The same fees and disbursements to counsel and to assignee as on contestation of claim.

*On Applications for discharge by the Court, for Confirmation of discharge or for annulling discharge.*

To the applicant's attorney,—	
If not contested.....	\$15 00
If contested without enquête.....	25 00
If contested with enquête.....	35 00
To the respondent's attorney,—	
If contested without enquête.....	15 00
If contested with enquête.....	25 00

*On Petitions (other than Petitions in Appeal) or in Contestations of Proceedings for Compulsory Liquidation.*

<b>To the petitioner's attorney,—</b>	
On every petition not contested.....	\$ 5 00
If contested without enquête.....	10 00
If contested with enquête.....	15 00
<b>To the respondent's attorney,—</b>	
If contested without enquête.....	8 00
If contested with enquête.....	12 00

*On Petitions in Appeal to a Judge.*

<b>To the attorney for the petitioner,—</b>	
If not contested.....	10 00
If contested.....	20 00
<b>To the attorney for the respondents.....</b>	<b>15 00</b>

**ASSIGNEE'S FEES.**

<b>On every chirographary claim and hypothecary claim not contested.....</b>	<b>0 10</b>
<b>For every witness examined on the contestation of a claim .....</b>	<b>0 25</b>
<b>On inscription of contestation for argument.....</b>	<b>2 00</b>

*On Petitions in Appeal to a Judge.*

<b>For transcript of and making up record, and attendance before the judge.....</b>	<b>5 00</b>
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*For making up inventory and statements—to be subject to taxation by Judge.*

*General Rule.*

**To the attorneys, prothonotaries and bailiffs,—**  
 Fees and disbursements on all rules, motions, copies of rules, judgments and orders, *commissions rogatoires*, and other incidental matters, according to the same rates as are allowed by the present tariff in first-class actions in the superior court.

## APPENDIX.



# APPENDIX:

## FORMS CONNECTED WITH THE CIVIL CODE.

### No. 1.

In connection with article 1834.

Lower Canada, }  
District of —. }

WE, —, of —, in —,  
(*Grocers*) hereby certify  
that we (have carried on and)  
intend to carry on trade and  
business, as (*Grocers*), at —,  
in partnership, under the name  
and firm of —, (*or as the  
case may be*), or I (*or we*) the  
undersigned, of —, hereby  
certify that I (*or we*) (have  
carried on and) intend to carry  
on trade and business as —,  
at —, in partnership with C.  
D., of —, and E. F., of —,  
and that the said partnership  
hath subsisted since the —  
day of —, one thousand —,  
and that we (*or I or we* and  
the said C. D. and E. F.) are  
and have been since the said  
day, the only members of the  
said partnership.

Witness our (*or any of our*)  
hands at —, this — day  
of —, one thousand —, (*or  
as the case may be*.)

27

### No. 2.

In connection with article 2299.

*Noting for Non-Acceptance.*

(Copy of bill & endorsements.)

On the —, 18—, the above  
bill was by me, at the request  
of —, presented for accept-  
ance to E. F., the drawee, per-  
sonally. (*or at his residence,  
office or usual place of business*)  
in the city (town or village)  
of —, and I have received  
for answer “—;” the said  
bill is therefore noted for non-  
acceptance.

A. B.,  
*Not. Pub.*

—, —, 18—,

Due notice of the above was  
by me served upon { A. B., }  
                                  { C. D., }  
the { drawer, } personally,  
      { endorser, }  
on the — of —, (*or, at his  
residence, or usual place of  
business in —, on the —  
of —, or, by depositing  
such notice, directed to him,*

at —, in her majesty's post office in this city, (town or village,) on the — day of —, and prepaying the postage thereon.

A. B.,  
Not. Pub.

—, —, 18—.

No. 3.

In connection with article 2203.

*Protest for non-acceptance or for non-payment of a bill payable generally.*

(Copy of bill and endorsement.)

On this — day of —, in the year 18—, I, A. B., notary public, for Lower Canada, dwelling at —, in Lower Canada, at the request of —, did exhibit the original bill of exchange, whereof a true copy is above written, unto E. F., the { drawee } thereof, personally, (or, at his residence, office or usual place of business in —,) and, speaking to himself (or his wife, his clerk, or his servant, &c.) did demand { acceptance } thereof; unto which demand { he } { she } answered, "—."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer and endorsers (or, drawer and endorsers) of the

said bill, and other parties thereto, or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of { acceptance } of the said bill.

All which I attest under my signature.

(Protested in duplicate.)

A. B., Not. Pub.

No. 4.

In connection with article 2203.

*Protest for non-acceptance or for non-payment of a bill payable at a stated place.*

(Copy of bill and endorsements.)

On this — day of —, in the year 18—, I, A. B., notary public for Lower Canada, dwelling at —, in Lower Canada, at the request of —, did exhibit the original bill of exchange whereof a true copy is above written, unto E. F., the { drawee } thereof, at —, being the stated place where the said bill is payable, and there, speaking to —, did demand { acceptance } of the said bill; unto which demand he answered "—."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents

do protest against the acceptor, drawer and endorsers (or, drawer and endorsers) of the said bill, and all other parties thereto, or therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present and to come, for want of { acceptance } of the said bill.

All which I attest under my signature.

(Protested in duplicate.)

A. B.,  
Not. Pub.

\_\_\_\_\_  
No. 5.

In connection with article 2320.

*Protest for non-payment of a bill noted, but not protested, for non-acceptance.*

*If the protest is made by the same notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, beginning with the words "And afterwards, on, &c.," continuing as in the last preceding form, but introducing between the words "did exhibit," the word "again;" and, in a parenthesis between the words "written unto," the words "and which bill was by me, duly noted for non-acceptance on — day of — last."*

*But if the protest be not made by the same notary, then it should follow a copy of the original bill and endorsements and noting*

*marked on the bill,—and then in the protest introduce in a parenthesis, between the words "written unto," the words "and which bill was, on the—day of — last, by —, public notary for Lower Canada, noted for non-acceptance, as appears by his note thereof marked on the said bill."*

\_\_\_\_\_  
No. 6.

In connection with article 2320.

*Protest for non-payment of a note payable generally.*

(Copy of note and endorsements.)

On this — day of —, in the year 18—, I, A. B., notary public for Lower Canada, dwelling at —, in Lower Canada, at the request of —, did exhibit the original promissory note, whereof a true copy is above written, unto —, the promissor, personally (or at his residence, office or usual place of business, in—), and speaking to himself (or his wife, his clerk, or his servant, &c.), did demand payment thereof; unto which demand { he } answered "—."

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promissor and endorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest present



and to come, for want of payment of the said note.

All which I attest under my signature.

(Protested in duplicate.)

A. B.,  
Not. Pub.

No. 7.

In connection with article 2320.

*Protest for non-payment of a note payable at a stated place.*

(Copy of note and endorsements.)

On this — day of —, in the year 18—, I, A. B., notary public for Lower Canada, dwelling at —, in Lower Canada, at the request of —, did exhibit the original promissory note, whereof a true copy is above written, unto —, the promisor, at —, being the stated place where the said note is payable, and there, speaking to —, did demand payment of the said note, unto which demand he answered “—.”

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and endorsers of the said note, and all other parties thereto, or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All which I attest under my signature.

(Protested in duplicate.)

A. B.,  
Not. Pub.

No. 8.

In connection with articles 2303, 2326.

*Notarial notice of a noting, or of protest for non-acceptance, or of a protest for non-payment of a bill.*

(Place and date of noting or of protest.)

[1st.]

To P. Q. (the drawer), at—.

Sir,—Your bill of exchange for \$—, dated at —, the —, upon E. F., in favor of C. D., payable — days after { sight, } was this day, at the request of —, duly { noted } { date, } { protested }

by me for { non-acceptance. } { non-payment. }

A. B.,  
Not. Pub.

(Place and date of noting or of protest.)

[2nd.]

To C. D. (endorser), (or F. G.), at —.

Sir,—Mr. P. Q.'s bill of exchange for \$—, dated at—,

the —, upon E. F., in your favor (or in favor of C. D.), payable — days after { sight, }  
 and by you endorsed, was this day, at the request of —, duly { noted } by me for { protested }  
 { non-acceptance. }  
 { non-payment. }

A. B.,  
 Not. Pub.

\_\_\_\_\_  
 No. 9.

In connection with articles  
 2303, 2326.

*Notarial notice of protest for  
 non-payment of a note.*

(Place and date of protest.)

To —, at —.

SIR,—Mr. P. Q.'s promissory note for \$—, dated at —, the —, payable { days }  
 { months }  
 { on — }  
 after date to { you } or order, and endorsed by you, was this day, at the request of —, duly protested by me for non-payment.

A. B.,  
 Not. Pub.

\_\_\_\_\_  
 No. 10.

In connection with articles  
 2303, 2326.

*Act of notarial service of notice of a protest for non-acceptance or non-payment of a bill, or of non-payment of a note (to be subjoined to the protest).*

And afterwards, I, the aforesaid protesting notary public, did serve due notice in the form prescribed by law, of the foregoing

protest for { non-acceptance }  
 { non-payment }

of the { bill }  
 { note } thereby pro-

tested upon { P. Q., }  
 { C. D., } the

{ drawer } personally, on  
 { endorsers }

the — day of — [or at his residence, office, or usual place

of business in —, on the — day of —; or, by depositing

such notice, directed to the said { P. Q., }  
 { C. D., } at —, in her ma-

jesty's post office in this city (town or village), on the —

day of —, and prepaying the postage thereon.]

In testimony whereof, I have, on the last-mentioned day and year, at — aforesaid, signed these presents.

A. B.,  
 Not. Pub.

\_\_\_\_\_  
 No. 11.

In connection with articles  
 2304, 2305, 2320, 2327.

*Protest of a justice of the peace (where there is no notary) for non-acceptance of a bill, or non-payment of a bill or note.*

(Copy of bill or note and endorsements.)

On this — day of —, in the year 18—, I, N. O., one of her majesty's justices of the peace for the district of —, in Lower Canada, dwelling at (or near) the village of —, in the said district, there being no practising notary public resident at or near the said village, (or any other legal cause), did, at the request of —, and in the presence of —, a householder in the said district, well known unto me, exhibit the original { bill } whereof a true copy is above written unto P. Q., the { drawer } thereof, { acceptor } { promissor } personally, (or at his residence, office, or usual place of business in —), and speaking to himself (his wife, his clerk, or his servant, &c.), did demand { acceptance } thereof, unto { payment } which demand { he } answered " —," { she } an-

Wherefore I, the said justice of the peace, at the request aforesaid, have protested, and by these presents do protest against the { drawer and endorsers } { promissor and endorsers } { acceptor, drawer and endorsers } of the said { bill } and all other parties thereto and therein concerned, for all exchange, re-exchange, and all costs, damages and interest, present

and to come, for want of { acceptance } of the said { payment } { bill } { note. }

All which is by these presents attested under the signature of the said (*the witness*), and under my hand and seal.

(Protested in duplicate.)

(*Signature of the witness.*)  
(*Signature and seal of the J.P.*)

No. 12.

In connection with article 2337.

*Schedule of fees and charges.*

For presenting and noting \$ c.  
for non-acceptance any bill of exchange, and keeping the same on record ..... 1 00  
Copy of the same when required by the holder. 0 50  
For noting and protesting for non-payment any bill of exchange or promissory note, draft or order, and putting the same on record..... 1 00  
For making and furnishing the holder of any bill or note, with duplicate copy of any protest for non-acceptance or non-payment, with certificate of service and copy of notice served upon the drawer and endorsers..... 0 50  
For every notice, including the service and re-

cording copy of the  
 same, to an endorser  
 or drawer, in addition  
 to the postages actually  
 paid .....\$0 50

No. 13.

**In connection with article 2134.**

*Form of a deed of bargain and sale executed before witnesses.*

This deed, made the — day of —, &c., between A. B., of —, &c., of the one part, and C. D., of —, &c., of the other part, witnesseth : That, for and in consideration of the sum of — to the said A. B. in hand paid by the said C. D., at or before the execution of these presents (the receipt whereof is hereby acknowledged by the said A. B.), he, the said A. B., doth hereby grant, bargain, sell and confirm unto the said C. D., his heirs and assigns forever, all that certain lot of land, &c., (insert here a description of the property sold) : To have and to hold the said lot of land and premises hereinbefore granted, bargained and sold, or intended so to be, with their and every of their appurtenances, unto the said C. D., his heirs and assigns for ever. In witness, &c.

A. B. [L. S.]  
C. D. [L. S.]

Signed, sealed and delivered, in the presence of } E. F.,  
G. H.

## No. 14.

In connection with article 2139.

*Memorial of a deed of bargain  
and sale executed before wit-  
nesses.*

A memorial to be registered of a deed of bargain and sale, bearing date the — day of —, in the year of our Lord —, made between A. B., of —, esquire, of the one part, and C. D., of —, &c., of the other party (*a full description of the parties to be inserted, as in the deed*), by which said deed the said A. B., for the considerations therein expressed, did grant, bargain, sell and confirm unto the said C. D., his heirs and assigns, all that, &c. (*insert a description of the property sold*): To hold to the said C. D., his heirs and assigns for ever: Which said deed is witnessed, &c. (*specify here the names of the witnesses to the execution of the deed*); and the said deed is required to be registered by the said C. D. As witness his hand, this — day of —, &c.

C. D.

Signed in the presence of

J. K.

L. M.

No. 15.

In connection with article 2041.

*Memorial of a deed of bargain  
and sale, by way of mortgage,  
before witnesses.*

A memorial to be registered

of a deed of bargain and sale, bearing date the — day of —, in the year of our Lord —, made between A. B., of —, &c., of the one part, and C. D., of —, &c., of the other part, by which said deed, the said A. B. did grant, bargain, sell and confirm unto the said C. D., his heirs and assigns, all that, &c. (*here insert a description of the mortgaged premises*): To hold to the said C. D., his heirs and assigns for ever, —subject, nevertheless, to redemption, upon payment to the said C. D., his heirs, executors, curators, administrators, or assigns, of the sum of —dollars, and lawful interest, as in the said deed is expressed; which said deed is witnessed (*specify here the names of the witnesses as in form 14*): and the same deed is hereby required to be registered by the said C. D. As witness his hand, this — day of, &c.

C. D.

Signed in the presence of

E. F.  
G. H.

No. 16.

In connection with articles  
2098, 2139.*Memorial of an onerous deed of  
gift inter vivos.*A memorial to be registered  
of a notarial copy of a deed of

gift *inter vivos*, bearing date at —, on the — day of —, in the year of our Lord —, made between A. B. of, &c., (and C. D., his wife by him in this behalf duly authorized,) of the one part, and E. F. of, &c., of the other part, (*a full description of the parties to be inserted, as in the deed*); before G. H., public notary and witnesses, (or before J. K., and another, public notaries, *as the case may be*), by which said deed of gift, the said A. B. and C. D., his wife, did give, grant and confirm unto the said E. F., his heirs and assigns, all that, &c., (*insert a description of the property conveyed by the deed of gift*); to hold to the said E. F., his heirs and assigns for ever; subject, nevertheless, to a certain life-rent, consisting of, &c., (*here insert the particulars of which the life-rent is composed*); which said life-rent is payable by the said E. F., to the said A. B. and C. D., his wife, each and every year during the term of their natural lives, as in the said deed of gift *inter vivos*, is expressed: And the said deed or gift is hereby required to be registered by (the said E. F.) As witness his hand, this — day of —, &c.

E. F.

Signed in the presence of

L. M.  
N. P.

No. 17.

In connection with the articles  
2098, 2139.

*Memorial of a will, or of a probate, or an office copy, or a notarial copy thereof.*

A memorial to be registered of the probate (or, of the original will, or an office or notarial copy, or as the case may be,) of the last will and testament of G. H., late of —, bearing date, &c., by which will the said testator did give and devise unto, &c., (as in the will,) to hold, &c.; which said will was executed by the said testator, in the presence of A. B. of, &c., C. D. of, &c.: And the probate of the said will, (or, the original, or an office or notarial copy, or as the case may be,) is hereby required to be registered by (O. P., one of the devisees therein named.) As witness his hand, this — day of —.

O. P.

Signed in the presence of

R. S.

T. V.

—  
No. 18.

In connection with the articles 2098, 2139.

*Memorial of a notarial obligation.*

A memorial to be registered of a notarial copy of a notarial obligation (or of the original, if it be the original,) bearing date the — day of —, in the year of our Lord —, made and entered into by A. B. of —, &c., before E. F., public

notary and witnesses, (or before G. H. and another, public notaries, if the case be so,) whereby the said A. B. owned himself to be indebted to C. D. of —, &c., in the sum of — dollars, to be paid, &c.,—and for securing the payment of the said sum of money and interest, hypothecated all that, &c., (insert the description of the hypothecated premises, as contained in the notarial obligation :) Which said notarial copy of the said notarial obligation is hereby required to be registered by the said C. D. As witness his hand, this—day of —, &c.

C. D.

Signed in the presence of

J. K.

L. M.

—  
No. 19.

In connection with the articles 2117, 2139.

*Memorial of the appointment of a tutor to minors for the preservation of the legal or tacit hypothec resulting from such appointment.*

A memorial to be registered of the appointment of A. B. of, &c., (insert the place of abode and addition of the tutor;) to be tutor to C. D., E. F., &c., minors under the age of twenty-one years, issue of the marriage of the late G. H., (the name of the father) deceased, with the late J. K., (the name of the mother) also deceased, which appointment was made by and

under the authority of L. M. *(insert the name and description of the judge by whom the appointment has been made;)* at, &c. *(the place where the appointment was made,)* on the — day of —, in the year of our Lord — and the said appointment is hereby required to be registered, for the preservation of the hypothec resulting therefrom, on the real estate of the said A. B., situate in the — of *(the name of the registration county or division within which the registration is to be made, and describe the property)* by N. O. of &c. *(insert the name and description of the person requiring the registration).* As witness his hand, this — day of —, &c.

N. O.

Signed in the presence of

O. P.

R. S.

—  
No. 20.In connection with the articles  
2121, 2139.*Memorial of a judgment.*

A memorial to be registered of a judgment in her majesty's court of —, at —, in the year of our Lord —, between A. B., of —, &c., plaintiff, and C. D., of —, &c., defendant, for — dollars, with interest from, &c., and costs taxed at — dollars; which *said* judgment was rendered

on the — day of the said month of —, and is hereby required to be registered by *(the said A. B.)* As witness his hand, this — day of —, &c.

A. B.

Signed in the presence of

J. F.

T. P.

—  
No. 21.

In connection with article 2151.

*Certificate of discharge from a judgment which has been registered.*

To the registrar of —.

I, A. B., of, &c., do hereby certify, that C. D., of, &c., hath paid me the sum of money due upon a judgment recovered in her majesty's court of —, at —, in the year of our Lord —, by me, the said A. B. against the said C. D., for — dollars, debt, and — dollars, costs, which judgment was registered on the — day of —, in the year of our Lord —; and I do hereby require an entry of such payment to be made, in the register wherein the same is registered, pursuant to law.

As witness my hand, this — day of —, in the year of our Lord —.

A. B.

Signed in the presence of

J. K., of —, &amp;c.

L. M., of —, &amp;c.

No. 22.

In connection with article 2151.

*A certificate to discharge a mortgage.*

To the registrar of—.

I, A. B., of, &c., (*the mortgagee in the deed, or his heirs, executors, curators, or administrators,*) do hereby certify, that C. D., of, &c., hath paid the sum of money due upon a deed of mortgage, bearing date the — day of —, in the year of our Lord —, made between the said C. D. of the one part, and me, the said A. B. (or E. F., *as the case may be,*) of the other part, which was registered on the — day of —, in the year of our Lord —; and I hereby require an entry of such payment to be made in the register, wherein the same is registered, pursuant to law.

As witness my hand, this— day of —, in the year of our Lord —.

A. B.

Signed in the presence of

O. P., of —, &amp;c.

R. S., of —, &amp;c.

No. 23.

In connection with article 2151.

*A certificate to discharge a notarial obligation, and extinguish the hypothec thereby constituted.*

To the Registrar of—.

I, A. B., of, &c., (*the hypothecary creditor, his heirs, executors, curators or administrators,*) do hereby certify, that C. D., of, &c., hath paid the sum of money due upon a notarial obligation, bearing date the — day of —, in the year of our Lord —, made by the said C. D., to me, and in my favour, (or in favour of G. H., *as the case may be,*) as the obligee therein named, before E. F., public notary and witnesses, (or before E. F. and another, public notaries, *as the case may be,*) which was registered on the — day of —, in the year of our Lord —; and I do hereby require an entry of such payment to be made in the register, wherein the same is registered, pursuant to law.

As witness my hand, this— day of —, in the year of our Lord —.

A. B.

Signed in the presence of

J. K., of —, &amp;c.

L. M., of —, &amp;c.

No. 24.

In connection with articles 2115, 2120, 2121.

To the registrar for the County (or registration division) of —.

SIR, — I hereby notify you that the following real proper-



ty, lying in your county (or registration division) that is to say—*(describe the property sufficiently, as then required by the civil code, observing the requirements of article 2168, if it is then in force in such county or registration division,)* is now in the possession of A. B., of—, as his property; and I give you this notice, to the end that the said property may become bound and affected by the general hypothec on the lands and real property of —, of —, created by *(describe the instrument as in form No. 36,)* which is already registered (or herewith filed for registration) in your office, in favour of C. D., of—, *(party in whose favour the hypothec exists)* and may be indexed by you as being so bound and affected.

Witness my hand, this — day of—, 18—.

E. F.

*(Quality in which E. F. acts.)*

No. 25.

In connection with article 2131.

To the registrar for the county (or registration division) of —.

SIR,—Take notice, that I hereby renew the registration of the hypothec created by the *(describe the instrument as in form 24,)* registered in your office, on the —day of —,

18—, and binding and affecting the following property lying in your county (or registration division), that is to say; *(describe the property as in form 24,)* which property is now in the possession of C. D., of — &c., as the owner thereof. —

Witness my hand, this day of—, 18—.

E. F.

*(Quality in which E. F. acts.)*

No. 26.

In connection with article 2172.

To the registrar of the county (or registration division) of —.

SIR,—Take notice, that the property mentioned in and affected by the *(describe the instrument as in form 24,)* filed for registration in your office, on the —day of—, 18—, is properly described under the provisions of article 2168 of the civil code, as follows: *(Insert the description as required by the said article, showing clearly of what number or numbers, or what part or parts of any number or numbers in the proper plan and book of reference, such property consists,)* and I give you this notice under the requirements and for the purposes of the said article.

Witness my hand at—this —day of, 18—.

A. B.

#### N O T E .

The remaining forms, numbers twenty-seven to fifty-six, which were published in the appendix to the government edition of the Code of Civil Procedure of Lower Canada, will be found incorporated in that portion of this work which contains the said code, at the various articles to which they respectively relate.



# INDEX.



# INDEX.

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